

MISSOURI DEPARTMENT OF NATURAL RESOURCES
LAND RECLAMATION COMMISSION

In the Matter of:

MAGRUDER LIMESTONE CO.,)
INC., Osage Beach Quarry,)
Miller County, Mo.,)
Applicant,)
LINDA WEEKS, et al.,) (No case number)
Petitioners,)
vs.)
LARRY P. COEN, Staff)
Director, Land Reclamation)
Program, Division of)
Environmental Quality,)
Respondent.)

FORMAL PUBLIC HEARING
6:00 p.m., Monday, March 24, 2008
Osage Beach City Hall
1000 City Parkway
Osage Beach, Missouri 65065

BEFORE:
W.B. TICHENOR
Presiding as Hearing Officer
Assigned by the
Land Reclamation Commission

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EXHIBIT INSTRUCTIONS:

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RECEIVED

Exhibit No. 1

Quarry Map *

Exhibit No. 2

Photographs *

Exhibit No. 3

The Trailer Life
Directory *

Exhibit No. 4

9/20/07 letter from
Director of Sales,
Trailer Life Directory
to Mr. and Mrs. Stockman,
Riverview RV Park,
Re: Impact of Stone
Quarry on RV Rating *

* Neither offered nor received into evidence.

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P R O C E E D I N G S

HEARING OFFICER TICHENOR: The Missouri Department of Natural Resources Land Reclamation Commission is convened in a formal public hearing In The Matter of Magruder Limestone Company, Inc., Osage Beach Quarry, Miller County, Missouri, Applicant. Somebody do me a favor and close those two doors.

Thank you. This is a proceeding under the Land Reclamation Act, Sections 444.760 through 444.789 of the Revised Statutes of Missouri. It is the expansion of permit No. 0086.

The Petitioners in this action are Lake Ozark and Osage Beach Joint Sewer Board, et al. versus Larry P. Coen, Staff Director, Land Reclamation Program, Division of Environmental Quality, Respondent. Magruder Limestone appears as the Applicant in the proceeding.

This hearing is being conducted on Monday, March the 24th, 2008. It convened at approximately 6:10 in the evening at the City Hall of Osage Beach, Miller County, Missouri.

W. B. Tichenor, hearing officer, assigned by the Land Reclamation Commission, presiding. All individuals please turn all off their cell phones and pagers at this time and leave them

1 off until the hearing is adjourned.

2 Those individuals with the media, if you
3 are going to take photographs during the proceeding,
4 please do not do so with a flash. Adjust your camera
5 accordingly. Those of you with the television media,
6 I want as little disruption of this proceeding as
7 possible. You have every right under the Open
8 Meetings Law to tape the proceedings. I do not want
9 them disrupted when you are doing so or when you
10 decide that you're going to quit taping. Are we
11 understood?

12 MEDIA: Yes.

13 HEARING OFFICER TICHENOR: Do you have
14 to work with that light shining in my eyes?

15 MEDIA: Is that better?

16 HEARING OFFICER TICHENOR: That's
17 better. We'll live with it. Now it's in
18 Mr. Brownlee's eyes. We'll just have to live with
19 it.

20 The Applicant appears by counsels Adam
21 Troutwine and Richard S. Brownlee, III, Hendren &
22 Andrae, LLC, Jefferson City. Petitioner, Joint Sewer
23 Board, appears by counsel Steve Mauer, Bryan Cave,
24 LLC, Kansas City. Individual petitioners appear by
25 counsel Brian E. McGovern and Ashley Schuette of

1 McCarthy Leonard, et al., L.C., Chesterfield.

2 Respondent appears by counsel Timothy Duggan,
3 Assistant Attorney General.

4 This hearing is a quasi-judicial
5 proceeding. Although it is designated under the
6 governing statutes in the regulations as a formal
7 public hearing, it is an evidentiary hearing. It is
8 a trial proceeding. It is being conducted to receive
9 evidence from the parties on the matter of the
10 issuance of the expansion of LRC permit No. 0086 to
11 Magruder Limestone Company, Inc.

12 The purpose of this hearing is to
13 receive testimony from the individual petitioners
14 that are represented by Mr. McGovern. This is not a
15 meeting to take statements and comments from persons
16 in attendance but who are not a party to the
17 proceeding.

18 In accordance with the appropriate
19 decorum for this proceeding, spectators are to
20 refrain from commenting, verbally responding or
21 applauding to questions by attorneys, statements by
22 witnesses or statements by the hearing officer.

23 Persons who will be called as witnesses
24 are to come to the table in front of me where you are
25 to be seated. You are to stand first to be sworn and

1 then you're to be seated in the witness chair. Upon
2 the completion of your testimony, you will be excused
3 and you may return to your seat.

4 Attorneys will conduct their examination
5 of each witness from the bench with the microphone
6 that is in front of them.

7 At this time, Mr. McGovern, you may make
8 any opening statement that you wish to make and then
9 call your first witness.

10 MR. MCGOVERN: Thank you, Mr. Tichenor.
11 Again, my name is Brian McGovern and I represent the
12 Concerned Citizens of Miller and Camden Counties,
13 LLC, as well as certain individual petitioners in
14 this case.

15 I don't think there is much secret in
16 terms of a lot of the detail of what we are here to
17 talk about. It has been discussed in the media, it
18 has been discussed at public hearing and now is the
19 opportunity to at least present to the hearing
20 officer testimony and evidence that relates to
21 whether or not this project will have any impact on
22 health, safety or livelihood of the various
23 petitioners.

24 The application itself was filed on
25 April 18th, 2007. Although there's been a variety of

1 questions and issues with respect to the manner in
2 which notice was provided, it was provided. It is an
3 area comprised of some 212 acres, and it is an area
4 located in close proximity to various residents,
5 businesses, schools and a senior center. The project
6 is bonded. However, that bond is only pertinent to
7 reclamation of the site; it is not to protect those
8 surrounding businesses or residences.

9 There are questions with respect to the
10 application itself, and it is the intention of
11 petitioners to present evidence through this case
12 dealing with the fact that the application was not
13 complete. And because that application was not
14 complete, there are a variety of petitioners who may
15 not have participated in these proceedings.

16 It is significant and it will be a
17 significant part of this process that the site has
18 utilities that run directly through the site itself.
19 The Ameren line, the sewer line itself runs right
20 through the middle of this project. There will be
21 significant evidence and testimony which will be
22 presented later in these proceedings pertaining to
23 those issues. You will hear about the fact that the
24 map originally submitted did not include those
25 utilities, and again, that will be one of the

1 arguments asserted by the petitioners in this case.

2 We are looking at this from the
3 standpoint consistent with Missouri policy. Missouri
4 policy in 444.762 says, "It is hereby declared to be
5 the policy of this state to strike a balance between
6 surface mining of minerals and reclamation of land
7 subjected to surface disturbance by surface mining."

8 The statute goes on to say, "and to
9 protect and perpetuate the taxable -- taxable value
10 of property and to protect and promote the health,
11 safety and general welfare of the people of this
12 state."

13 We will also, as petitioners in this
14 case, point out a history of noncompliance by
15 Magruder. And we intend to do that not just by
16 looking at the violation history of Magruder
17 Limestone Company, but also the various related
18 companies of which Magruder is involved, and you will
19 see there are many of them.

20 The evidence that the petitioners intend
21 to introduce will address those violation histories.
22 It will look at that application to determine whether
23 or not all of them were, in fact, disclosed, and we
24 will look to those histories of noncompliance to
25 assist the hearing officer as well as the Commission

1 in making a determination of whether or not there
2 will be future noncompliance because, of course, what
3 we are dealing with in this case is a quarry which
4 does not yet -- yet exist.

5 You will hear from various petitioners,
6 some of which are homeowners, some of which have
7 children in the area, some of which operate
8 businesses. In particular, you will hear from Mike
9 Atkisson, and Mike Atkisson is going to tell you
10 about his project. You'll hear from him about his
11 experience in working in quarries. He has extensive
12 experience with respect to blasting and he is
13 certainly familiar with those problems that can
14 arise. When he finished that, he began working as a
15 developer, and he has a development which you will
16 hear about from Mr. Atkisson.

17 You will also hear testimony from the
18 Stockmans, and the Stockmans own the Riverside [sic]
19 RV Park located right along Highway 54. And you will
20 hear testimony from them that that RV park, in fact,
21 is a significant part of their livelihood. It is the
22 basis upon which they earn their income.

23 Now, livelihood in Missouri is an
24 interesting concept. But we will contend that it is
25 the means by which these people earn their living.

1 It is a means by which they earn income. And the
2 evidence will show that, in fact, if that quarry were
3 to go in, there will be an impact on both
4 Mr. Atkisson, the Stockmans, as well as other
5 petitioners that you will hear from.

6 You will hear testimony from different
7 petitioners about safety concerns, those who have
8 children walking along the very road that these
9 trucks will travel, those who have children who
10 attend the school that is along that same road.

11 We will try not to repeat the testimony.
12 We are going to group testimony when we can, and we
13 are going to do that certainly to try to expedite
14 these proceedings and put all of the pertinent
15 evidence in front of not only Mr. Tichenor, but the
16 Commission as well, who will ultimately be the ones
17 to decide what happens in this case.

18 We will present the evidence as I
19 indicated of the various Magruder companies. We will
20 do so directly through the records which have been
21 submitted as well as the testimony of members of the
22 Department of Natural Resources who, in fact, not
23 only monitor those violation histories, but are the
24 ones who we expect to enforce those rules.

25 I anticipate that throughout this

1 process, as more and more of the evidence is
2 introduced, that petitioners will, in fact,
3 demonstrate that the health, safety and livelihood of
4 these petitioners will be unduly impacted. Thank
5 you.

6 HEARING OFFICER TICHENOR: Call your
7 first witness.

8 MR. McGOVERN: Mr. Atkisson.

9 (The witness was sworn.)

10 HEARING OFFICER TICHENOR: Proceed,
11 Mr. McGovern.

12 MR. McGOVERN: Thank you, Mr. Tichenor.

13 DIRECT EXAMINATION BY MR. McGOVERN:

14 Q. Mr. Atkisson, would you please state
15 your full name for the record.

16 A. Mike Atkisson.

17 Q. And what is your current address,
18 Mr. Atkisson?

19 A. 241 Highway D, Kaiser, Missouri.

20 Q. I guess I should have asked you this
21 before you sat down, but can you show Mr. Tichenor
22 and others -- attorneys here as to where your
23 property is located? What I'm speaking of is the
24 development property located on the map.

25 A. The development property is this

1 property here. It borders right here (indicated).

2 Q. And that map is, in fact, also included
3 within the binder I've provided in front of you and
4 it's identified behind tab No. 1; is that correct?

5 A. That's correct, yes.

6 Q. In looking at the -- again, Exhibit 1 or
7 certainly the map that is contained on the easel,
8 just to get our orientation, you've indicated where
9 your development is located; is that correct?

10 A. I've -- I've indicated my property
11 there.

12 Q. Yes.

13 A. The development is a little bit further
14 to the east.

15 Q. And just so we're clear, when I say
16 "development," what I'm referring to is the houses
17 that you've constructed; is that correct?

18 A. Yes.

19 Q. Would you describe to Mr. Tichenor the
20 development that you have put in place?

21 HEARING OFFICER TICHENOR: Mr. McGovern,
22 let me interrupt just a moment. Mr. Atkisson, is the
23 red light at the base of that microphone on?

24 THE WITNESS: No.

25 HEARING OFFICER TICHENOR: Will you

1 please push that? Is it on now?

2 THE WITNESS: Yes.

3 HEARING OFFICER TICHENOR: Pull it a
4 little closer to you. All right. Thank you. Do you
5 want to restate your question?

6 MR. McGOVERN: Thank you.

7 BY MR. McGOVERN:

8 Q. If you could, Mr. Atkisson, describe to
9 Mr. Tichenor when I'm saying "development" what
10 that -- what is that referring to?

11 A. We started development approximately
12 three years ago of a upscale subdivision on Highway D
13 there which is a parcel of this property here, and we
14 have completed the infrastructure. We have some
15 homes, some homes occupied, some homes at completion
16 and some under construction there, and just -- just
17 developed them into an upscale subdivision for our
18 area.

19 Q. When you're talking about "upscale,"
20 what is the price range of the homes that you are
21 selling within the development?

22 A. Price range, approximately half a million
23 dollars.

24 Q. If you look behind tab No. 2 within the
25 binder, there is a group exhibit, and could you

1 describe to Mr. Tichenor what those various
2 photographs represent?

3 A. Okay. The first one here is the first
4 home that was completed and sold in the subdivision.
5 Second page is a picture of the concrete curb and
6 gutter, asphalt street, a partial picture you can see
7 of the clubhouse. Pool's just in front there.

8 Next is another picture of a completed
9 home and one under construction.

10 Q. Would this be looking in the direction
11 of the anticipated location of the quarry itself?

12 A. Yes, sir.

13 Q. If you could now, Mr. Atkisson, I would
14 like to ask you just some -- a few background
15 questions, then we'll get back to the development
16 itself.

17 Describe to Mr. Tichenor what you did
18 from an employment standpoint prior to the time that
19 you got involved in the role of general contractor
20 and doing residential construction.

21 A. Okay. Excuse me. For approximately ten
22 years prior to 2000, year 2000, I was employed and
23 managed the quarries, the materials division manager
24 in the lake area here and was heavily involved in
25 the -- in the day-to-day management of the quarries

1 located in the area here with APAC.

2 Q. And would you describe what your duties
3 and responsibilities were with respect to the various
4 quarries in which you performed work?

5 A. Well, as I say, the day-to-day
6 activities, looking after all the operation, the
7 superintendents, overseeing all of that, as well as
8 the blasting done at the quarries. I was very
9 involved in that.

10 Q. And would you describe in a little more
11 detail your role or involvement with respect to the
12 blasting?

13 A. I became certified under the industry
14 standards several years ago when the State was kind
15 of rumbling about having to put some guideline
16 restrictions, laws in place for blasting in Missouri
17 because there was complaints going on around the
18 state of Missouri.

19 And so at that time, since I was in
20 charge of the men doing the blasting for our company
21 and -- and even those people that are contractor --
22 outside contractors, I chose to go to Rolla School of
23 Mines and become certified in blasting so I would
24 understand what -- what I was overseeing there and
25 what I was managing.

1 Q. Based upon your experience working with
2 these quarries over the ten years, have you become
3 familiar with problems with respect to keeping dust
4 within the property boundary?

5 A. Yes, I do. There's -- there's always a
6 problem of that in relation to dust from a quarry.

7 Q. And in your experience based upon your
8 employment, what type of things did you observe with
9 respect to dust traveling beyond the property
10 boundary of quarries in which you were operating?

11 A. Well, it -- it is a problem, continuous
12 problem. It's -- it's impossible to keep everything
13 on-site.

14 Q. Relative to your experience with respect
15 to blasting, what type of issues or problems did you
16 see arise relative to blasting?

17 A. The problems there, you have the noise,
18 you have the dust, you have the smell, but definitely
19 the vibration part of it is -- was a situation that I
20 encountered most of and had the most problems with.

21 Q. With respect to the location of the
22 development which you've shown just to be on the
23 right edge of what is identified as the Magruder
24 site, how close to your development is that?

25 A. Well, their property adjoins my

1 property, and --

2 Q. And have you had a chance to review the
3 mine plan?

4 A. Yes, I have.

5 Q. And does that mine plan come in close
6 proximity to your property?

7 A. Within 50 feet.

8 Q. You've indicated that currently you have
9 developed how many homes?

10 A. I have five completed homes at this
11 time.

12 Q. Are there additional lots available
13 within this additional phase of the project?

14 A. Yes, five additional.

15 Q. Are you also intending to develop a
16 phase two?

17 A. It's necessary, yes.

18 Q. In which direction would phase two go
19 relative to the Magruder proposed quarry?

20 A. Directly toward their quarry.

21 Q. And again, you've indicated that the
22 Magruder quarry would come within -- based upon your
23 review of the mine plan, within 50 feet of your
24 project; is that correct?

25 A. Yes, sir.

1 Q. How many acres is your -- I'm sorry.

2 A. Let me clarify. It will come within 50
3 feet of my property. My development won't necessarily,
4 phase two, go to there, but my development -- I mean,
5 it's all there for development.

6 Q. Do you have any estimation as to how
7 close the mine operations would come to the
8 development itself, the actual construction of the
9 homes?

10 A. I'm going to say in the neighborhood of
11 5 to 700 feet.

12 Q. Based upon your experience in working in
13 the industry, working at quarries, do you have
14 concern about just the viability of your project?
15 I'm talking about the structures themselves being in
16 such close proximity to the quarry.

17 A. Yes, sir.

18 Q. How many acres is your property?

19 A. Total property?

20 Q. Yes.

21 A. I have approximately 320 acres.

22 Q. And is, in fact, the development of
23 those homes a source of income for you?

24 A. Yes, sir.

25 Q. And I'm saying "for you." You're

1 married, correct?

2 A. Yes, sir.

3 Q. And what is your wife's name?

4 A. Jackie.

5 Q. And when earlier you indicated that
6 "Three years ago the two of us decided to engage in
7 this type of work," were you referring to your wife?

8 A. Yes.

9 Q. Is she also involved in the business
10 that is developing these homes?

11 A. Yes.

12 Q. Would you describe for Mr. Tichenor your
13 concerns relative to the fact that this quarry is
14 proposed in such close proximity to your development?

15 A. Well, I'm concerned about all the
16 issues, the noise, the dust, and like I say, the
17 vibration and fumes from blasting. There are fumes
18 from blasting. There will also be, I understand, an
19 asphalt plant which definitely increases the fumes
20 considerably there.

21 But the vibration, from my experience
22 with boots on the ground, I understand what goes on
23 around the quarry and the blasting and the vibration,
24 and I know it to be as imperfect a science as
25 anything there is. And it's -- it's not when

1 everything goes well, it's when things don't go well
2 is what I'm concerned about in the blasting and
3 the -- and the duration.

4 Q. The sale of those homes, is that a
5 source by which you and your wife earn your income?

6 A. At this time it's the sale of the land.
7 I -- I haven't built the homes, but the sale of the
8 land, which without those, I mean -- and that's
9 what -- we move on to the next one then.

10 Q. And is that a source of livelihood for
11 both you and your wife?

12 A. Yes, sir.

13 Q. Do you and your wife also -- are you
14 involved in another business?

15 A. Yes, sir.

16 Q. And what is that other business?

17 A. We have a gift home accessory shop here
18 in Osage Beach.

19 Q. And is that shop serviced by the sewer
20 line that runs from the water treatment plant through
21 the quarry?

22 A. Yes, sir.

23 Q. And is that gift shop also a source of
24 livelihood for both you and your wife?

25 A. Yes, sir.

1 Q. And do you have concerns about the fact
2 that the quarry is gonna be located effectively on
3 top of this sewer line --

4 MR. BROWNLEE: I'm gonna object to that,
5 your Honor. That's not a fair statement. Counsel --

6 HEARING OFFICER TICHENOR: Rephrase
7 your -- sustained.

8 MR. McGOVERN: I'll rephrase it.

9 HEARING OFFICER TICHENOR: Rephrase your
10 question.

11 BY MR. McGOVERN:

12 Q. Do you have some concern that there is a
13 sewer line that runs through the area depicted as the
14 Magruder quarry?

15 A. Yes, sir.

16 Q. And would you please describe to
17 Mr. Tichenor what your concerns are relative to the
18 gift shop?

19 A. Well, my concern there is, is that when
20 something happens to the sewer in the City of Osage
21 Beach, we will be out of business temporarily until
22 whenever such fashion it can be repaired and back
23 going, not unlike the entire area, because it serves
24 us -- to major municipalities in this area.

25 So I'm very concerned about that

1 situation and concerned about the blasting because of
2 my background history in it with the plant and the
3 lines and the proximity of the quarry.

4 Q. Does that sewer also service the homes
5 which you are developing?

6 A. It does not, no.

7 Q. From the standpoint of the development,
8 and I'm talking now about the homes again, did you
9 have activity with respect to interest in those homes
10 prior to the time that the quarry became public?

11 A. Yes.

12 Q. Have you had any interest in those homes
13 since that time?

14 A. We basically had -- I, again, will talk
15 about lots. I have had no -- let me put it this way,
16 very little interest and have had no activity.

17 Q. Do you also have concerns about dust
18 migrating from the quarry onto the homes, the land
19 which you are developing?

20 A. Yes.

21 Q. And what -- what concerns do you have
22 there?

23 A. Well, the health situation with the
24 dust, people that possibly live in the community and
25 having health problems that dust will affect.

1 Q. And what about the homes themselves, do
2 you have any concerns that the dust will, in fact,
3 migrate to the air in which these homes are located?

4 A. It's very possible.

5 Q. From the standpoint of the roads
6 surrounding this quarry, what concerns have you
7 had -- if any, do you have with respect to the roads
8 the trucks will travel?

9 A. Well, for -- for my part in my
10 subdivision, the roads won't be traveled
11 particularly -- you know, there will be no impact to
12 me as far as the dusty roads and that part unless,
13 there again, the wind carries it like it does the
14 dust from the plant itself or stockpiles or whatever.

15 MR. McGOVERN: I don't have anything
16 further at this time.

17 HEARING OFFICER TICHENOR: The hearing
18 officer has no questions at this time. Who's
19 conducting the examination for the appellants?

20 MR. BROWNLEE: Me.

21 HEARING OFFICER TICHENOR: Mr. Brownlee,
22 you're recognized.

23 CROSS-EXAMINATION BY MR. BROWNLEE:

24 Q. Mr. Atkisson, my name is Richard
25 Brownlee. You and I have met on a number of

1 occasions including prior to this proceeding; is that
2 not correct?

3 A. That's correct, yes.

4 Q. I'm gonna ask you a series of questions
5 and I would remind you that we took your deposition
6 last Friday --

7 A. Yes, sir.

8 Q. -- in this proceeding and I asked you a
9 number of questions, and -- again, under oath, and
10 I'm gonna try to go through just a few of those
11 things in response to what Brian has asked you.

12 In fact, when you were employed by APAC,
13 you did receive what was then a blaster's
14 certification, did you not?

15 A. Yes, sir.

16 Q. And wasn't that a program that was
17 sponsored by the Missouri Limestone Producers and
18 taught by Dr. Worsey at the University of Missouri at
19 Rolla?

20 A. I believe that's correct, yes.

21 Q. And it was kind of a voluntary program,
22 was it not, sir?

23 A. Correct.

24 Q. And isn't it true that you were -- and
25 another gentleman with APAC did receive certification

1 as it existed at that time?

2 A. Yes, sir.

3 Q. And are you aware, sir, that last year
4 the Missouri Legislature passed a law that
5 essentially brought all of the blasting law under the
6 Missouri State Fire Marshal's Office, are you aware
7 of that?

8 A. I -- that's my understanding, yes, sir.

9 Q. And when you were employed at APAC, you
10 were sort of the general manager of some quarries in
11 the lake area, correct?

12 A. Yes, sir.

13 Q. There were seven at the time; is that
14 not correct?

15 A. Yes, sir.

16 Q. And you mentioned NOVs and NOEEs. Could
17 you for the record tell me what an NOV is?

18 A. Notice of violation.

19 Q. And what's an NOEE?

20 A. Never had one. I think that's stopping
21 progress, stopping the work.

22 Q. Would it be notice of excess emissions?
23 That might be, for example, ambient dust crossing the
24 line and then they may elevate that NOEE to an NOV?

25 A. Correct.

1 Q. Did any of the quarries you operated
2 during your tenure for two years with APAC ever
3 receive an NOV?

4 A. I don't recall at this time.

5 Q. You don't recall?

6 A. No, sir.

7 Q. We've talked a little bit, and I think
8 Brian -- I want to make sure I -- if I repeat a
9 little bit, I'm just having to go through your notes
10 and his examination and the deposition so I've got a
11 little bit ...

12 Your home is at Kaiser, Missouri; is
13 that correct.

14 A. Correct.

15 Q. And that's not gonna have any effect
16 with this -- by this quarry being granted, is it,
17 sir?

18 A. I don't anticipate any.

19 Q. And you have no health problems nor does
20 your wife as a result of you working in quarries for
21 at least two years; is that correct?

22 A. Not that I'm aware of.

23 Q. Okay. And when you developed this
24 property when you purchased it in the year 2005, you
25 purchased that in terms of buying your sister's

1 share; is that correct?

2 A. Correct.

3 Q. And that had been in the family for,
4 what, a number of years?

5 A. Yes, sir.

6 Q. And I think your Aunt Gertrude owns
7 property that would be to the west of your property;
8 is that correct? South of the Magruder property and
9 west of your property?

10 A. Correct, correct.

11 Q. Okay. And that red sewer line runs
12 through her -- her property, does it not?

13 A. Correct. Yes, sir.

14 Q. Before it enters the Magruder property
15 and then goes down to the sewer plant?

16 A. Yes, sir.

17 Q. Okay. And noticeably absent on this map
18 that we have drawn is another quarry that's existing
19 today called the Hudson Hollow quarry. Are you
20 familiar with that?

21 A. Yes.

22 Q. And where is it located in relation to
23 the sewer plant?

24 A. Directly to the south.

25 Q. And are you aware, sir, that's a 15-acre

1 facility that is currently permitted to operate as a
2 quarry?

3 A. I'm aware of that from the talk and the
4 things I -- yes, I'm aware of that.

5 Q. And do you know whether there are any
6 restrictions on that quarry being operated, your
7 personal knowledge?

8 A. I don't know anything about it.

9 Q. And that quarry was existing when you
10 initiated the development of your property, was it
11 not, in the year 2005?

12 A. I understand it was. I did not realize
13 it.

14 Q. So even if this Magruder quarry would
15 not be granted, that other quarry could start
16 production tomorrow, could it not, sir?

17 A. I do not know the answer to that.

18 Q. Do you know anything that would prevent
19 it from starting tomorrow?

20 A. (Shook head.)

21 Q. You have to answer --

22 MR. McGOVERN: Speculation.

23 HEARING OFFICER TICHENOR: Wait just a
24 minute. Pardon me?

25 MR. McGOVERN: I object. This is

1 speculation. He's testified he knows nothing about
2 the quarry or its conditions.

3 HEARING OFFICER TICHENOR: Restate --
4 what was the question posed by Mr. Brownlee?

5 (THE COURT REPORTER READ BACK THE
6 PREVIOUS QUESTION.)

7 MR. McGOVERN: Hang on.

8 HEARING OFFICER TICHENOR: The witness
9 has testified about his ten years experience in the
10 mining industry, quarry industry.

11 THE WITNESS: Yes, sir.

12 HEARING OFFICER TICHENOR: The objection
13 is overruled. Respond to the question of
14 Mr. Brownlee. Do you know any reason based upon your
15 experience why the other quarry could not start
16 operating tomorrow?

17 THE WITNESS: I guess I don't understand
18 the question clearly.

19 BY MR. BROWNLEE:

20 Q. I don't know how else to ask it. It's
21 pretty straightforward. Well, let's -- let's move
22 on.

23 A. I mean, I don't have any control over
24 whether that quarry starts or not tomorrow.

25 Q. Well, that quarry, you've been down

1 there, have you not, sir?

2 A. Yes, sir.

3 Q. And you were down there, actually, when
4 we took a site visit, were you not?

5 A. Yes, sir.

6 Q. In that quarry or that -- there's a high
7 wall that's almost, what, 20, 30 feet from the sewer
8 line fence, fair statement?

9 A. It's a reasonable distance there, yes.

10 Q. What -- what is a high wall?

11 A. High wall is the base where the quarry
12 is operating at.

13 Q. And it's solid limestone, is it not?

14 A. Yes, sir.

15 Q. And it would appear to go on a hogback
16 or a bulge. It looks like it goes directly south
17 into where the Magruder property is, does it not?

18 A. Yes, sir.

19 Q. And do you know how many tons would be
20 in that 15 -- rock -- tons of rock would be in that
21 15-acre site?

22 A. No, sir, I don't.

23 Q. So in all your experience, you couldn't
24 even give me a -- just a --

25 A. I -- I --

1 Q. -- baseball park figure?

2 A. There again, it would be speculation and
3 it would serve no purpose.

4 Q. Okay. Now, while you were employed with
5 Magruder in the quarry business, you had absolutely
6 no responsibility for permitting, did you, sir?

7 HEARING OFFICER TICHENOR: Hold on a
8 moment. Mr. Brownlee?

9 MR. BROWNLEE: Did I --

10 HEARING OFFICER TICHENOR: You just
11 asked his employment with Magruder. I believe he
12 said he was with APAC.

13 MR. BROWNLEE: Yeah, I'm sorry.

14 BY MR. BROWNLEE:

15 Q. During your employment with -- with
16 APAC, you had no responsibility for permitting, did
17 you?

18 A. I did not have -- for the permitting
19 application part of it, for filling out the
20 application, it's the same with APAC.

21 Q. Well, do -- do you recall that when I
22 took your deposition I asked you this question which
23 is on page 14? I said, "So you're telling me that
24 during your period with APAC, you were involved in no
25 permitting nor closure of any APAC facility,

1 correct?" And your answer was, "To the best of my
2 knowledge, that's correct." Do you recall that?

3 A. Yes, sir.

4 MR. McGOVERN: I object. It's improper
5 impeachment. He just answered the question the same
6 way. If you're going to impeach him, then to impeach
7 him, tell him where you're reading from and what, in
8 fact, is the inconsistent statement.

9 HEARING OFFICER TICHENOR: Mr. McGovern
10 is correct. I'm not sure I heard an inconsistent
11 statement here, Mr. Brownlee.

12 BY MR. BROWNLEE:

13 Q. Did you have any personal knowledge of
14 the operational background of the sewer plant that
15 we're -- we've discussed here?

16 A. I don't have any knowledge or background
17 of the operation, no.

18 Q. And during your employment with APAC,
19 did you have any experience or direct responsibility
20 for land reclamation closures of any facility?

21 A. No closures of any facilities.

22 Q. And were you a manager when the quarry
23 was being operated right across the river from the
24 campground?

25 A. Yes, sir.

1 Q. And do you know where that -- how much
2 stone was taken out of that facility?

3 A. No, sir, I don't.

4 Q. Do you know where the stone was used?

5 A. All around the area.

6 Q. Okay. And it was used for community
7 development, I assume, in this area?

8 A. Yes, sir.

9 Q. Do you think that quarries have an
10 important part in the community development?

11 A. Very important, yes, sir.

12 Q. And you have looked at the Magruder
13 permit application; is that correct?

14 A. Yes, sir.

15 Q. And you've looked on it on line; is that
16 correct?

17 A. Yes, sir.

18 Q. And the total area, the entire area is,
19 what, approximately 212 acres?

20 A. That's what I understand, yes, sir.

21 Q. And now, are you also aware, have you
22 looked at what's called the blast plan that Magruder
23 filed?

24 A. Yes, sir.

25 Q. And tell the judge what that is.

1 A. The blast plan is the way they have
2 projected to blast rock loose on the -- in the quarry
3 site.

4 Q. That would be the portion of their
5 property where they intend to start; is that correct?

6 A. Not to my knowledge, no. The mine plan
7 to me is the entire mine plan.

8 Q. I'm talking about the blast plan.

9 A. Okay.

10 Q. The blast -- what is the blast plan
11 vis-a-vis or as opposed --

12 A. I'm looking at the blast plan as they
13 said where they're going to start. As far as I'm
14 concerned, the blast plan encounters [sic] the entire
15 long-term mine plan. That's my understanding.

16 Q. Do you understand there's a separate
17 distinction between a -- the mine plan, the overall
18 mine plan, and the blast plan?

19 A. I'm -- I'm going to say I think I
20 understand the difference, yes.

21 Q. Okay. And is the -- is -- the blast
22 plan is a much more specific area on the overall mine
23 plan where they intend to start blasting if this
24 permit is granted?

25 A. Where they intend to start, yes, sir.

1 Q. Yes, sir.

2 A. Where they intend to start.

3 Q. And do you have any idea -- I mean, we
4 could make a mark on this, but where is the blast --
5 where is the specific area that they intend to start
6 blasting if this permit is granted?

7 A. The way I understand, we'll call it the
8 blue line there, the streamline, which would be due
9 west of the red lines where the sewer lines go across
10 there.

11 Q. There's -- as you come down the hill to
12 the sewer plant, there's a valley that goes off to
13 the south, correct?

14 A. Correct.

15 Q. And it's in that valley that the blast
16 plan is -- indicates where they would start; is that
17 correct?

18 A. Yes, sir.

19 Q. In fact, is not that -- the blast plan
20 where they start blasting probably a mile from your
21 development over on Route D?

22 A. Correct, where they start will be
23 approximately a mile.

24 Q. A mile.

25 A. I don't know exactly there.

1 Q. And you yourself have never conducted
2 any blasting; isn't that correct?

3 A. Correct.

4 Q. And when APAC was -- did blasting, you
5 either used one of the APAC personnel or you hired an
6 outside consultant; is that correct?

7 A. Correct.

8 Q. Do you know the name of that consultant?

9 A. No, I don't.

10 Q. You don't recall?

11 A. I don't recall, no.

12 Q. Do you know who they're using today?

13 A. Do not know.

14 Q. And do you have any idea where this
15 blast plan starts, how far it is from the sewer line
16 that's been discussed here tonight?

17 A. From the discussion here tonight? No,
18 I -- I don't know how far it is across there.

19 Q. Okay. Have you ever conducted any
20 blasting under power lines or your company when you
21 were there as manager?

22 A. No, sir, not that I'm aware of, not --

23 Q. Have you ever -- and when I say "you," I
24 again, Mike, I'm talking about APAC.

25 A. Right.

1 Q. When you've been manager, has -- have
2 you done any blasting around any type of pipeline
3 that you know of?

4 A. Not that I recall, not that I'm aware
5 of, no.

6 Q. And again, I want to say, you've never
7 been responsible for conducting any blasting
8 yourself, have you?

9 A. I -- I have never physically done it. I
10 was certified to oversee them. I have been on many,
11 many shots --

12 Q. But you --

13 A. -- packed powder to them, but I never
14 designed, drilled the shot, loaded the holes and set
15 it off, detonated it, I never did that, no, sir.

16 Q. Thank you. And again, when you chose to
17 develop your development site on Route D, the -- the
18 Hudson Hollow APAC quarry was there just like it is
19 today; is that correct?

20 A. As far as I know.

21 Q. Okay. And I want to make it clear, the
22 sewer system that you have developed and that --
23 that -- it is not in any way connected to the Lake
24 Ozark or to the sewer system we've depicted with the
25 red line, correct?

1 A. Correct.

2 Q. They're individual treatment -- sand
3 treatments, are they not?

4 A. There's -- no, there's one sand
5 treatment.

6 Q. But each one of the --

7 A. Each --

8 Q. -- homeowners has a sep -- septic
9 facility?

10 A. Septic facility, yes, sir.

11 Q. And it goes through a sand treatment
12 box, correct?

13 A. Correct.

14 Q. And where does that ultimately
15 discharge?

16 A. Into the valley below there.

17 Q. On your property?

18 A. Yes, sir.

19 Q. Okay. And this is all in Miller County?

20 A. Yes, sir.

21 Q. And there's no planning and zoning
22 restrictions in Miller County, are there, sir?

23 A. Correct.

24 Q. And is that -- your development in any --
25 within the city limits of any city?

1 A. No, sir.

2 Q. Do you have any knowledge that someone
3 has not purchased a lot that you know of because of
4 this particular Magruder application?

5 A. I cannot say for sure that that has not
6 happened.

7 Q. Well, I -- you twisted your answer there
8 a little. I -- the question is, do you have -- do
9 you have knowledge that anybody has not purchased a
10 lot that you know of because of this particular
11 Magruder application?

12 A. All I know is I've had no activity since
13 the application, and that -- that's all I can say.

14 Q. Okay. Well, do you recall that -- and
15 again, I'm gonna ask you if you want to look at this,
16 this is on page 38 of the deposition. I asked you on
17 Friday --

18 MR. BROWNLEE: Do you want me to show it
19 to him?

20 HEARING OFFICER TICHENOR: Approach the
21 witness to show him.

22 MR. BROWNLEE: Do you want a -- do you
23 have a copy of it? You got one?

24 HEARING OFFICER TICHENOR: Here.

25 Mr. Atkisson, if you'll take a copy and return to the

1 witness chair. Cite again the page and line,
2 Mr. Brownlee.

3 MR. BROWNLEE: It's -- Pam, does he have
4 the shortened copy too? It's page 38.

5 HEARING OFFICER TICHENOR: Why don't you
6 try -- see where you are now.

7 BY MR. BROWNLEE:

8 Q. See if you can get to page 38.

9 A. I have it.

10 Q. You got that?

11 A. Yes, sir.

12 Q. And you -- on line 21 you see where I
13 asked you, "Do you have anybody that has not
14 purchased a lot that you know of because of this
15 particular application?" You see that?

16 A. Yes, sir.

17 Q. And your answer is, "I can't say that I
18 know of anybody that has not." Is that your answer
19 today?

20 A. Yes, sir.

21 Q. Okay. And do you have any engineering
22 testimony or expert consultation that you relied on
23 to determine whether this potential Magruder site
24 will have any effect on this subdivision?

25 A. No, sir.

1 Q. Excuse me. From -- from working in --
2 in quarries during the two years from '98 to 2000,
3 did you normally have experience where -- where
4 ambient dust from a quarry would travel as much as a
5 mile or further?

6 A. Did I have experience?

7 Q. Yeah.

8 A. We're talking eight years ago. I don't
9 recall any --

10 Q. Okay. Fair enough.

11 A. -- situation.

12 Q. And again, I think you clarified it.
13 You haven't built any homes in there, you've just
14 sold lots, correct?

15 A. I've sold lots and built all the
16 infrastructure, pool, clubhouse and that stuff.

17 MR. BROWNLEE: All right. Okay. Okay.

18 HEARING OFFICER TICHENOR: Just a point
19 of clarification for the hearing officer. Did you
20 have two years or ten years prior experience in the
21 mining industry, quarry industry?

22 THE WITNESS: Ten years.

23 HEARING OFFICER TICHENOR: Ten years.

24 All right. Mr. Duggan, do you wish to cross-examine
25 this witness?

1 CROSS-EXAMINATION BY MR. DUGGAN:

2 Q. I have just a couple of questions
3 related to your experience in managing quarries.
4 During the time you managed the quarries --

5 HEARING OFFICER TICHENOR: Excuse me a
6 moment. Can you see the witness?

7 MR. DUGGAN: I can, yeah.

8 HEARING OFFICER TICHENOR: Okay. All
9 right.

10 BY MR. DUGGAN:

11 Q. During the time you managed seven
12 quarries -- is that right -- over a two-year period;
13 is that correct?

14 A. Ten-year period.

15 Q. Ten-year period. Were you personally
16 responsible for dust control at those quarries?

17 A. By "personally," I'm going to say being
18 that I was a division manager, I would be personally
19 responsible. Didn't do it, but responsible, yes.

20 Q. And what did your responsibilities
21 include with respect to ensuring that dust did not
22 leave the premises of the quarry?

23 A. We tried to our best ability, of course,
24 by watering haul roads and watering conveyors and
25 stockpiles and whatever we could do and -- which

1 helps a lot. It's not good 100 percent any time.

2 Q. Did you ever manage the facility with
3 respect to how strong the wind was blowing or in
4 which direction the wind was blowing?

5 A. State that again, please.

6 Q. In other words, if it were a
7 particularly windy day, did -- did that affect how
8 much you produced that particular day?

9 A. How much dust we produced that day?

10 Q. Yes.

11 A. How much -- sure. The windier the day,
12 the harder it was to control.

13 Q. And did that affect how much rock
14 production you produced --

15 A. That --

16 Q. -- for that particular day?

17 A. That could have a -- that could have
18 a -- an effect on it.

19 Q. So in other words, to prevent dust, did
20 you ever have to reduce the amount of rock
21 production?

22 A. Potentially we did. Normally you just
23 tried harder and put more water and things on the
24 haul roads and whatever it is and kept working.

25 Q. So that would be a matter of last

1 resort, in other words, if you said we're going to
2 stop blasting, we're gonna stop producing rock,
3 breaking rock, whatever you do at the quarry because
4 it's just too windy?

5 A. That would be the last resort, right.
6 That's -- that's not what you're there for.

7 Q. Right. And the other measures you use
8 ahead of that included watering the roads --

9 A. Correct.

10 Q. -- watering the stockpiles. Any other
11 measures for dust control?

12 A. Covers, tarps, containments, whatever.
13 I mean, just any -- any means of controlling the dust
14 from the wind getting to it and whatever, and like I
15 say, using a lot of water and ...

16 Q. If there were complaints about the
17 amount of dust crossing the property line, did those
18 complaints come to you when you were supervising?

19 A. They would end up with me, yes, sir.

20 Q. And did you react to those complaints by
21 taking some sort of action to cut down on the amount
22 of dust?

23 A. Yes, sir.

24 Q. Did weather conditions affect the timing
25 of the setting of charges? In other words, were

1 there certain weather conditions that prevented you
2 from blasting at the site?

3 A. Sure, sure. Stormy weather,
4 particularly if they were predicting storms, things
5 like that. You wouldn't load a blast because of
6 safety reasons, would be mainly. Of course rainy
7 sometimes, you know, weather would hold -- I mean, it
8 wouldn't stop you from blasting, but it would change
9 your way of doing it and take longer and things like
10 that.

11 Q. In your experience did weather affect
12 the amount of vibration that would travel from a
13 blast?

14 A. I'm gonna say that would affect more the
15 above-ground than the vibration in the ground. Low
16 clouds, stuff like this would affect how the sound
17 traveled. And the vibration above the ground, it
18 would hold it down instead of letting it out. At
19 times it would cause a significantly higher vibration
20 above ground.

21 Q. I see. And that would cause
22 significantly higher impacts from that vibration on a
23 cloudy day off site --

24 A. Yes, sir.

25 Q. -- is that right?

1 A. Yes, sir.

2 Q. And as supervisor, did you get
3 complaints about that, the amount of vibration above
4 ground that was impacting somebody off the site of
5 the quarry?

6 A. Yes, we got, I mean, complaints both
7 ways depending on circumstances.

8 Q. Okay. And when you got those
9 complaints, did you take corrective measures?

10 A. You would -- you would try to. You did
11 all you could. What I said a while ago is, it's as
12 far from a perfect science as anything I know, and it
13 is impossible to control the shots. And my
14 experience is, there again, with boots on the ground,
15 until the rocks fall, the dust settles and the
16 vibration quits, that's when you know whether --
17 whether you've got a successful shot or not or one
18 that will not bother the area and things. And
19 that's -- that's the concern because it is -- every
20 shot is different. I know of no two that was alike.

21 Q. Okay. But you would take into account
22 how much cloud cover was present?

23 A. You -- you would take into account
24 everything that you was aware of that you knew to do
25 to try to make the shot have the least effect on the

1 neighboring community around either the landowner or
2 whatever they were, yes, sir.

3 Q. What, if anything, could you do about
4 smell or fumes that you described during your
5 experience?

6 A. There's really nothing you can do that
7 I'm aware of. When it happens, it happens.

8 Q. What produces those fumes that you talk
9 about?

10 A. Powder that didn't detonate, that didn't
11 go, escapes out of the shot and then is carried by
12 the wind.

13 Q. Okay. Did you receive complaints while
14 you were supervisor about off-site fumes?

15 A. Occasionally, yes, sir.

16 Q. Occasionally. Were you able to take
17 corrective measures to cut down on the number of
18 complaints you received?

19 A. There again, in that instance, there --
20 it was hard to do anything with because it was
21 generally a wet-hole situation and those are hard to
22 deal with. And when -- like I say, when it happens,
23 you don't know it until afterwards. You don't plan
24 it. Nobody plans to have a bad shot. I mean, you
25 just don't do that. Nobody would.

1 MR. DUGGAN: I don't have any other
2 questions.

3 HEARING OFFICER TICHENOR: Mr. Mauer,
4 I've heard nothing in the direct testimony that was
5 adverse to the position of the Joint Sewer Board
6 regarding this. Did you wish to directly examine
7 this witness?

8 MR. MAUER: I do have some questions,
9 yes, sir.

10 HEARING OFFICER TICHENOR: How -- how do
11 they relate to the position of the Joint Sewer Board?

12 MR. MAUER: This witness was asked
13 questions about a variety of things, including the
14 Hudson Hollow quarry, and he was also asked questions
15 about the treated sewage in his subdivision. He was
16 asked questions about this blast plan, all of which I
17 believe that affect the end impact, the position of
18 the City of Lake Ozark and the City of Osage Beach
19 and the Joint Sewer.

20 HEARING OFFICER TICHENOR: Proceed.

21 MR. MAUER: Thank you.

22 CROSS-EXAMINATION BY MR. MAUER:

23 Q. Mr. Atkisson, my name is Steve Mauer.
24 It's good to see you again.

25 A. Thank you.

1 Q. Thank you for being here tonight. Some
2 questions, first of all, just to clarify the record.
3 You have ten years experience working for quarries;
4 is that right?

5 A. Yes, sir.

6 Q. All right. And what was your experience
7 with APAC?

8 A. Two years, approximately a little less
9 than two years.

10 Q. And which two years?

11 A. The last.

12 Q. Okay. And tell me which -- what those
13 dates were, please.

14 A. I don't recall exactly. It was -- I
15 know it ended in March or -- I think March of 2000
16 and --

17 Q. Okay. So you were there from '98 to
18 2000?

19 A. '98 to 2000.

20 Q. All right. Let's talk about the blast
21 plan that you were asked about. Do you remember
22 those questions from Mr. Brownlee?

23 A. Yes, sir.

24 Q. All right. Now, in the permitting
25 process, you said you didn't actually fill one of

1 those out; that wasn't your job, correct?

2 A. Not in the time frame he asked me about.

3 Q. Okay. But you have reviewed the
4 application submitted by Magruder; did I understand
5 your testimony on that?

6 A. Yes, sir.

7 Q. All right. Now, was this blast plan
8 which Mr. Brownlee asked you about, was that part of
9 the application that was submitted by Magruder when
10 they originally started to try and open up this
11 quarry?

12 A. I really don't know.

13 Q. Okay. Do you know if the blast plan is
14 binding on Magruder at all?

15 A. No, sir.

16 Q. Okay. Do you know if the blast --

17 HEARING OFFICER TICHENOR: Let me have a
18 clarification on that. You do not know?

19 THE WITNESS: I do not know if it is
20 binding or not.

21 HEARING OFFICER TICHENOR: Just wanted
22 to be clear for my record since I'm the one that's
23 gonna have to weigh this. Proceed, Mr. Mauer.

24 MR. MAUER: Thank you.

25 BY MR. MAUER:

1 Q. The blast plan, do you know if the --
2 you were asked about that's where they're going to
3 start. Do you remember that?

4 A. Yes, sir.

5 Q. All right. Is it your understanding if
6 in order to start on any property, you actually have
7 to bond the property?

8 A. Yes, sir.

9 Q. Okay. So before any of the property
10 within Magruder's mine plan could actually be
11 started, they would have to place a bond over those
12 particular acres; do I understand that correctly?

13 A. Yes, sir, it's my understanding.

14 Q. All right. Now, this -- the original
15 application, they bonded only ten acres; is that
16 right?

17 A. I understand that's the way it is. I --

18 Q. Okay. And do -- do you recall if the
19 ten acres that they had originally planned to bond,
20 that they actually bonded so they could actually
21 start construction, do you recall if that ten acres
22 was immediately adjacent to or directly on top of the
23 sewer lines at the far north end of their property?

24 A. I don't know that I can say that I know
25 exactly where the ten acres was that they bonded.

1 Q. Okay. Do you -- you also were asked
2 about some studies that you had with Dr. Worsey. Do
3 you remember that?

4 A. Yes.

5 Q. In any of your programs and studies with
6 Dr. Worsey, did he ever say that blasting could be
7 done completely safe such that there is no
8 possibility of any accidents?

9 A. Not that I'm aware of.

10 Q. Okay. Did you ever hear Dr. Worsey ever
11 say that no shot could ever cause an accident or no
12 shot could ever go awry?

13 A. Not that I'm aware of.

14 Q. In fact, wasn't your training that
15 blasting is inherently dangerous and there can always
16 be accidents?

17 A. I know that to be a fact.

18 Q. Okay. The -- the other thing I want to
19 ask you about is this Hudson Hollow quarry. It's a
20 15-acre site; is that right?

21 A. That's my understanding, yes.

22 Q. All right. And you were asked if you
23 knew anything about whether or not it could start
24 back up. Are you aware that APAC wrote a letter on
25 December 21st, 2007, to the Missouri Department of

1 Land Reclamation asking for release of that property
2 state -- stating that APAC acquired that site years
3 ago in order to provide some overburdened material to
4 the City of Osage Beach for their wastewater
5 treatment plant adjacent to the property?

6 A. You lost me back there a ways, part of
7 the way.

8 Q. Okay. Are you aware that APAC has
9 requested that the property be released because they
10 never quarried on that property and don't intend to?

11 A. That -- I understand. I have heard that
12 they want to release that quarry.

13 Q. Okay.

14 A. Yeah.

15 Q. So is it -- in response to the question
16 about could they start up, is it your understanding
17 that, in fact, they don't intend to start up and
18 never did intend to --

19 MR. BROWNLEE: Well, I'm gonna object
20 that --

21 HEARING OFFICER TICHENOR: Sustained.

22 MR. BROWNLEE: -- that it's hearsay
23 and --

24 HEARING OFFICER TICHENOR: Sustained,
25 Mr. Brownlee. We can move on.

1 BY MR. MAUER:

2 Q. Mr. Atkisson, the Hudson Hollow
3 property, have -- you've been out to that site,
4 right?

5 A. Yes, sir.

6 Q. Has there been any quarrying, actual
7 digging of limestone rock on that site?

8 A. No, sir.

9 Q. All right. Oh, one last thing. The
10 sewage treatment system that you -- that you have for
11 your subdivision, that is a septic system with sand
12 filtration; is that right?

13 A. Correct. Yes, sir.

14 Q. All right. So just so we're clear on
15 the record, you're not releasing raw sewage out onto
16 your property to eventually run into the streams and
17 into the Osage River?

18 A. No, sir.

19 Q. All right. So any sewage -- any water
20 or discharge that would come off of those systems
21 would be after it is already treated and permitted by
22 the Department of Natural Resources?

23 A. Correct. Yes, sir.

24 Q. All right. Now, in comparison, if this
25 quarry operates and this quarry causes damage to the

1 sewer lines or the sewage treatment system, is it
2 your understanding that clean, already treated water
3 would be discharged or would there be a break such
4 that raw sewage would leak out onto the ground and
5 into the stream, the lake and the river?

6 A. It would be raw sewage.

7 Q. All right. Is that what your concern is
8 in part about the location of this particular quarry
9 at this site?

10 A. Yes, sir.

11 MR. BROWNLEE: I'm gonna object to
12 leading of the witness and the fact that this is
13 friendly cross-examination.

14 HEARING OFFICER TICHENOR: Sustained. I
15 don't recall that we had anything in the direct
16 testimony of Mr. Atkisson relative to that specific
17 concern, Mr. Mauer. Proceed with your questioning.

18 MR. MAUER: I --

19 HEARING OFFICER TICHENOR: Next
20 question.

21 MR. MAUER: Well, let me try again.

22 BY MR. MAUER:

23 Q. Mr. Atkisson, you expressed that you had
24 a concern about the -- about the impact of a break
25 and what it might do onto your business; is that

1 right?

2 A. Yes, sir.

3 Q. All right. Now, what's your
4 understanding would happen if this quarry does cause
5 a break in the sewer line or damage to the sewage
6 treatment plant?

7 A. It could create a shutdown of the entire
8 system, the way I understand.

9 Q. Okay. And in the event that would
10 happen, what would that impact be on your business?

11 A. Would shut our business down without --
12 without a sewage facility.

13 Q. Do you have -- you've been out to the
14 site; is that right --

15 A. Yes.

16 Q. -- of the sewage treatment plant?

17 A. Yes, sir.

18 Q. Can you describe for Mr. Tichenor the
19 topography on how the sewage treatment plant sits
20 vis-a-vis the river down below that we see on the
21 map?

22 A. Well, it sets up, I think, probably 50
23 to 60 feet below the bottom of the stream bottom down
24 there that flows on down into the river there.

25 Q. Okay. And when you were out at the

1 site, did you see anything that in the event that
2 a -- that the sewage treatment plant or lines are
3 damaged such that sewage leaks, did you see anything
4 out there that would trap that sewage or prevent it
5 from flowing directly into the Osage River?

6 A. No, sir.

7 MR. MAUER: All right. Nothing further.

8 HEARING OFFICER TICHENOR: Mr. McGovern,
9 you got some recross -- or redirect? Pardon me.

10 MR. McGOVERN: I'll take your cross.

11 HEARING OFFICER TICHENOR: No, no.
12 We've ranged -- we've ranged far enough afield and
13 chased too many rabbits already. So if you would --

14 MR. McGOVERN: Thank you.

15 REDIRECT EXAMINATION BY MR. McGOVERN:

16 Q. Mr. Atkisson, just some follow-up
17 questions. You were asked a variety of questions
18 involving your experience --

19 THE COURT REPORTER: Sir?

20 MR. McGOVERN: I'm sorry?

21 THE COURT REPORTER: Your microphone.

22 MR. McGOVERN: Oh, it's on.

23 THE COURT REPORTER: Oh, is it? I'm
24 sorry.

25 BY MR. McGOVERN:

1 Q. You were asked a variety of questions
2 regarding your experience with other quarries
3 unrelated to the Magruder project. I think it would
4 help Mr. Tichenor, would you show him where the,
5 approximately, Hudson Hollow quarry is located?

6 HEARING OFFICER TICHENOR: Mr. Atkisson,
7 this time move that chair clear up here. I don't
8 want you tripping over it or the next witness, all
9 right? Thank you, sir. Now, then.

10 THE WITNESS: I understand it's this
11 area right in here (indicated).

12 BY MR. MCGOVERN:

13 Q. Now, just for the record, you are
14 reflecting that -- effectively an area shaped like a
15 triangle that would be just south of the water
16 treatment plant and just to the north of the Magruder
17 site in that corner; is that correct?

18 A. Correct.

19 Q. You were asked a question as to whether
20 or not they ever mined any limestone in that quarry.
21 Do you recall that?

22 A. Yes.

23 Q. Was your testimony they had not?

24 A. Correct.

25 Q. You were asked questions in terms of the

1 release of that quarry. What did you mean by the
2 term "release"?

3 HEARING OFFICER TICHENOR: You can have
4 a seat.

5 THE WITNESS: By release, the way I
6 understand, they have indicated that they want to
7 release it back and terminate the -- the permit that
8 they have on that at this time.

9 BY MR. McGOVERN:

10 Q. You were also asked questions in terms
11 of bonding. Do you recall that?

12 A. Yes, sir.

13 Q. You do understand that to operate a
14 quarry, a quarry has to post a bond; is that correct?

15 A. Yes, sir.

16 Q. And what is your understanding as to
17 what purpose that bond serves?

18 A. To make sure that reclamation is done
19 after completion of your work.

20 Q. And when you're talking about
21 reclamation, you are talking about putting the ground
22 back into some agreed-upon condition when the quarry
23 operations are complete; is that right?

24 A. Yes, sir.

25 Q. Does that bond do anything to protect

1 the surrounding residents or businesses?

2 A. No, sir, not that I'm aware of.

3 Q. Does that bond, if you know, based upon
4 your experience, provide any protection that if, in
5 fact, that sewer line or the Ameren electric line
6 should be damaged or broken in some fashion, does
7 that bond step in to help repair that type of damage?

8 A. No, sir.

9 Q. You've indicated release. Are you
10 talking about release of the bond?

11 A. I'm talking about release of the permit
12 and taking the permit back or relinquishing the --
13 the permit to where they cannot operate on it.

14 Q. When you say "not operate," what you are
15 suggesting is that your understanding is that upon
16 release, there will not be any quarry operations
17 respectively in that piece you've just described; is
18 that correct?

19 A. Correct.

20 Q. And as far as you're aware, there have
21 never been any quarry operations in that site; is
22 that accurate?

23 A. Correct.

24 Q. There was another quarry that was
25 operated in the area. I think you were asked some

1 questions about that.

2 A. Yes, sir.

3 Q. Is that the one that would be located
4 farther to the north on the other side of the Osage
5 River?

6 A. Yes, sir.

7 Q. And could you show -- you won't be able
8 to.

9 MR. BROWNLEE: It's not on the map.

10 BY MR. McGOVERN:

11 Q. -- show Mr. Tichenor -- it would be off
12 the top of that map; is that correct?

13 A. Yes, sir.

14 Q. And this map that is shown also as
15 Exhibit No. 1 doesn't even reflect the location of
16 that particular quarry; is that accurate?

17 A. Correct.

18 Q. When is the last time that quarry
19 operated, if you know?

20 A. I don't know, really.

21 Q. Has it been several years?

22 A. It's been a few years. I -- I don't
23 know. I -- like I say, I've been gone eight years
24 and don't pay any attention to it.

25 Q. Mr. Duggan asked you a series of

1 questions involving dust control at a quarry. Do you
2 recall that?

3 A. Yes, sir.

4 Q. Let's look at this from the other side.
5 Would you explain to Mr. Tichenor all those various
6 sources of dust emissions that can come from a
7 quarry?

8 A. All the different ones?

9 Q. Yes.

10 A. Well, they come from crushing
11 operations, screening operation, blasting, haul
12 roads, stockpiles.

13 Q. Conveyors?

14 A. Conveyors, any -- any equipment.

15 Q. And in terms of the controls that are
16 put in place, I think you mentioned you may have
17 spray bars, you may have bag houses, haul roads may
18 be sprayed by water trucks. Is that some of the
19 things you can do?

20 A. Yes, sir.

21 Q. In the event you have these high winds,
22 are you able to always control the dust?

23 A. No, sir.

24 Q. When you have an errant blast, can you
25 control not only the rock that may fly, but can you

1 control the dust generated from that?

2 A. No, sir.

3 Q. You were asked questions about whether
4 or not you, in fact, would reduce production based
5 upon a day in which there's high winds. Do you
6 recall that?

7 A. Yes, sir.

8 Q. Does that question assume that your
9 supervisors or the owners of that company would
10 permit you to, in fact, reduce reduction on a windy
11 day?

12 A. That was my comment, that that's not
13 what you're there for is -- you're there to operate
14 as much as you can.

15 Q. I was gonna follow up on that. When you
16 said "that's not what you're there for," what do you
17 mean?

18 A. Well, you're there to produce material.

19 Q. And are you there to produce as much
20 rock as you can?

21 A. Yes, sir.

22 Q. You're there to produce as much rock as
23 can be sold?

24 A. Yes, sir.

25 Q. There were questions asked on a cloudy

1 day that one of the things that you could do to
2 reduce the vibrations that may travel to adjoining
3 properties is simply not blast that day. Do you
4 recall that?

5 A. That would be the only thing that would
6 work.

7 Q. And does that assume that, in fact,
8 management would permit you not to blast on a cloudy
9 day so that you could minimize vibrations traveling
10 to the surrounding properties?

11 A. I don't recall that being -- that
12 happening.

13 Q. Your testimony is have you -- and I'll
14 ask it: Have you ever not blasted simply because it
15 was a cloudy day?

16 A. Simply because of a cloudy day, no, not
17 that I'm aware of.

18 Q. In your experience of managing these
19 quarries, have you had quotas placed on you in terms
20 of the amount of rock you have to produce?

21 MR. BROWNLEE: Your Honor, I'm gonna
22 object to that. He's -- apparently he's never worked
23 for the applicant and we're just completely far
24 afield. I don't think he can produce any evidence
25 that would be relevant to this particular operation.

1 If he wants to ask that question to a Magruder
2 witness, it might be proper at that time, but this is
3 just pure speculation.

4 MR. McGOVERN: On cross-exam -- I'm
5 asking him his experience. On cross-examination he
6 was asked a series of questions relative to his
7 experience on production, controls, things you can do
8 to increase or decrease those problems associated
9 with dust, and I'm simply following up on those very
10 questions in which the door was opened on cross.

11 HEARING OFFICER TICHENOR: How does any
12 of this relate to the health, safety or livelihood of
13 this witness?

14 MR. McGOVERN: Questions were asked on
15 cross-examination.

16 HEARING OFFICER TICHENOR: I understand
17 that --

18 MR. McGOVERN: Because --

19 HEARING OFFICER TICHENOR: -- Mr. McGovern.
20 I was sitting here. I heard them.

21 MR. McGOVERN: This testimony goes
22 directly to the fact that they do not control these
23 very issues that would, in fact --

24 HEARING OFFICER TICHENOR: Objection
25 sustained. You can cross-examine the applicant's

1 witness on this subject.

2 BY MR. McGOVERN:

3 Q. You indicated that you are certified to
4 oversee the shot. Does that -- is that correct? Was
5 that your testimony?

6 A. At this moment. I was certified just
7 like the blaster there. My job was to oversee the
8 blasting.

9 Q. If you could explain -- explain what is
10 involved in the process of blasting in a rock quarry.

11 A. Well, you --

12 Q. Take us through each step.

13 A. Okay. You -- once you're open and
14 going, you have the rock exposed there, you drill a
15 series of holes and load them with powder and
16 detonate them.

17 Q. And you say they're detonated. What are
18 you using -- how do you do it?

19 A. Well, you use a detonator. You put the
20 powder and -- and either -- there's different ways.
21 There's electric and nonelectric, and -- and you set
22 the charge off with the detonators in the hole and --

23 Q. And who controls the amount of charge
24 that's being placed in the hole?

25 A. The men laying out the shot, drilling

1 and loading.

2 Q. You indicated that nobody wants a bad
3 shot. What is a bad shot?

4 A. Well, a bad shot is one where you have
5 excessive fly rock, vibration, dust and all the
6 problems that goes along with blasting.

7 Q. When you're talking about fly rock,
8 you're talking about material actually blasted out of
9 the hole?

10 A. Yes.

11 Q. And in your experience, have you seen
12 fly rock travel beyond the property boundary?

13 A. Yes, sir.

14 Q. Were you aware of the Magruder project
15 at the time you began your development of the
16 residential homes?

17 A. No, sir.

18 Q. I think you were asked a question of
19 whether or not you've ever managed a quarry in which
20 there were power lines traveling right through the
21 quarry. And I'll ask, have you ever managed one in
22 which there was a sewer line or a water main
23 traveling through the center of the quarry?

24 A. No, sir.

25 Q. Are you aware of any quarry within the

1 state of Missouri in which there is a power line or a
2 sewer line or a water main traveling through the
3 center of the quarry?

4 A. I -- I don't pay attention to them.

5 I --

6 Q. Do you know of any?

7 A. I don't know of any, no.

8 Q. Last question. You had indicated -- and
9 I think I understand. The topography of this
10 ground -- if we begin at the south end of the
11 Magruder project, moving towards the river, the river
12 is lower or higher than the Magruder project site?

13 A. Lower.

14 Q. The river is lower?

15 A. Yes, sir.

16 Q. So if there's a water flow or surface
17 water coming from the Magruder site, it would travel,
18 then, downhill into the river?

19 A. Yes, sir.

20 MR. McGOVERN: I have nothing further.

21 HEARING OFFICER TICHENOR: Mr. Brownlee,
22 do you wish to recross?

23 MR. BROWNLEE: Just very brief, please.

24 RE-CROSS-EXAMINATION BY MR. BROWNLEE:

25 Q. Regarding the Hudson Hollow site, you

1 stated that you do not know whether -- you said the
2 bond has not been released on that as far as you
3 know?

4 A. As far as I know. I don't know anything
5 about it. I mean, I've been told --

6 Q. You've testified a lot. Now you tell me
7 you don't know anything about it.

8 A. I've been told that they're wanting to
9 release or they're in the process of releasing that
10 permit, is all I know.

11 Q. You were told that they've requested it
12 be released. Do you know whether, in fact, as we sit
13 here tonight, that it has been released?

14 A. No, sir.

15 Q. Do you know whether, in fact, there's
16 any restrictions on that quarry from starting
17 production tomorrow?

18 MR. McGOVERN: Objection, speculation.

19 HEARING OFFICER TICHENOR: We've plowed
20 over this ground before. Objection is sustained.

21 BY MR. BROWNLEE:

22 Q. And one thing that Mr. Mauer raised, are
23 you familiar with the operational history of the
24 sewer plant we're so concerned about in the last two
25 years?

1 A. No, sir.

2 Q. You don't know whether they've, in fact,
3 received several NOVs in the last few years for
4 bypass events; that is, letting raw sewage go
5 directly into the river?

6 A. No, sir.

7 Q. You're not aware of that?

8 A. No, sir.

9 MR. BROWNLEE: I have nothing further.

10 HEARING OFFICER TICHENOR: Mr. Duggan?

11 MR. DUGGAN: Nothing further.

12 HEARING OFFICER TICHENOR: Thank you,
13 sir. Mr. Mauer?

14 MR. MAUER: Nothing further.

15 HEARING OFFICER TICHENOR: All right.

16 The witness is excused. Thank you. We'll take a
17 five-minute recess.

18 (A RECESS WAS TAKEN.)

19 HEARING OFFICER TICHENOR: The hearing
20 will come to order. Mr. McGovern, will you call your
21 next witness.

22 MR. MCGOVERN: Vicky Stockman.

23 HEARING OFFICER TICHENOR: Ms. Stockman,
24 will you come forward and stand to be sworn.

25 (The witness was sworn.)

1 HEARING OFFICER TICHENOR: Will you take
2 a seat, please. Is that red light still on, on the
3 microphone?

4 THE WITNESS: Yes, it is.

5 HEARING OFFICER TICHENOR: All right.
6 Proceed, Mr. McGovern.

7 MR. MCGOVERN: Thank you, Mr. Tichenor.

8 DIRECT EXAMINATION BY MR. MCGOVERN:

9 Q. Ms. Stockman, would you please state
10 your full name for the record.

11 A. Vicky Stockman.

12 Q. And what is your current address,
13 Ms. Stockman?

14 A. 398 Woodriver Road, Lake Ozark.

15 Q. And where is that located in relation to
16 the proposed quarry site?

17 A. In the upper left-hand corner on the
18 river.

19 Q. Would that also be the location of the
20 RV park?

21 A. Yes, it is.

22 Q. Okay. And what is the actual name of
23 that park?

24 A. Riverview RV Park.

25 Q. Would you go up to the easel and point

1 out to Mr. Tichenor where the park is actually
2 located?

3 A. (Witness complied.)

4 Q. And you have pointed to an area just
5 south of the Osage River and just east of Highway 54;
6 is that right?

7 A. Correct.

8 Q. And what is the name again of the entity
9 which actually owns and operates that RV park?

10 A. Riverview RV Park, LLC.

11 Q. And how long are you saying you and your
12 husband -- so you and your husband operate that?

13 A. Yes.

14 Q. And how long have you been doing that?

15 A. A little over seven years.

16 Q. Would you describe for Mr. Tichenor
17 effectively what that RV park is?

18 A. We are a campground. We accommodate
19 various RVs ranging from tents to million-dollar
20 motor homes.

21 Q. Are there also units that you can rent?

22 A. Yes, there are.

23 Q. And how many different sites does the RV
24 park have?

25 A. 75.

1 Q. During the period of time what we'll
2 call high season, which I'll define as Memorial Day
3 through Labor Day --

4 A. Yes.

5 Q. -- would you describe to Mr. Tichenor
6 the either occupancy or vacancy rate you have at the
7 RV park?

8 A. Most weekends during that season we are
9 completely full.

10 Q. When you say "completely full," you're
11 talking about each of the 75 sites are located with
12 individuals who have brought their RVs --

13 A. That's correct.

14 Q. -- campers to the site?

15 A. Yes, sir.

16 Q. Now, do people also camp there?

17 A. Yes.

18 Q. When I say "camp," are they bringing
19 tents and camping in the area?

20 A. Yes.

21 Q. Do you also earn income from campers?

22 A. Yes.

23 Q. Would the sites at which -- on which
24 somebody would place a tent in addition to the 75
25 sites that you mentioned?

1 A. That's included.

2 Q. Would you describe to Mr. Tichenor the
3 area in which the park is located? What are some of
4 the amenities of the RV park itself?

5 A. The amenities would be like we have a
6 swimming pool, a fishing pond, we're on the Osage
7 River, various activities.

8 Q. And you say "various activities." What
9 are you referring to?

10 A. Bingo, games, volleyball, horseshoes,
11 basketball.

12 Q. And is there actually an office where
13 people come to check in when they come to the RV
14 park?

15 A. Yes, sir.

16 Q. Are there facilities available such as
17 bathrooms, showers, those type of things?

18 A. Yes, sir.

19 Q. Now, you indicated there's a pool; is
20 that right?

21 A. Yes.

22 Q. And is the pool located on the premises
23 of the RV park or is it someplace else?

24 A. No. It's on the premises.

25 Q. The park itself is also located close to

1 Highway 54; is that right?

2 A. Yes.

3 Q. Where is it located or where is it
4 situated in relation to Highway 54?

5 A. Actually, Highway 54 is slightly above
6 the ground level of the RV park.

7 Q. Is it also slightly -- is the park
8 itself below the access road that you would use to
9 get from Highway 54 into the park itself?

10 A. Yes.

11 Q. Does it sit down at river level?

12 A. Yes.

13 Q. Do you hear much noise off of Highway 54
14 traffic --

15 A. No.

16 Q. -- down in the RV park?

17 A. No.

18 Q. From the standpoint of the property
19 itself, how many acres are comprised in the RV park?

20 A. Approximately 15.

21 Q. Has it always been those 15 acres?

22 A. Yes.

23 Q. Do you use that property for anything
24 other than the operation of an RV park?

25 A. No.

1 Q. From the standpoint of your customers,
2 can you describe to Mr. Tichenor where the customers
3 come from?

4 A. They come from all over the United
5 States, all -- all 50 states, probably.

6 Q. Does the RV park, the business that
7 operates the RV park, do you advertise its services
8 in any newspapers, on TV, billboards in any fashion?

9 A. The only advertising we do are in our
10 trade directories.

11 Q. And you've pointed to two Trailer Life
12 Directories in front of you. One is 2007, the second
13 is 2008; is that correct?

14 A. That's correct.

15 Q. Inside the exhibit binder behind tab 3
16 is excerpts from the 2007 Trailer Life Directory
17 which I've included instead of copying the entire
18 directories there.

19 HEARING OFFICER TICHENOR: Thank you,
20 Mr. McGovern.

21 MR. McGOVERN: You're welcome.

22 HEARING OFFICER TICHENOR: Save a few
23 trees.

24 MR. McGOVERN: Those are our binders.

25 HEARING OFFICER TICHENOR: That's right.

1 BY MR. McGOVERN:

2 Q. And could you describe to Mr. Tichenor
3 what is the Trailer Life Directory?

4 A. This is a directory that people
5 subscribe to. It has RV parks listed in it for all
6 50 states. It is used by the majority of campers to
7 locate places that they want to go and stay.

8 Q. In terms of other trailer parks located
9 in close proximity to yours, are there any others?

10 A. Yes, there are.

11 Q. And how many others are located in close
12 proximity to your RV park?

13 A. There are approximately ten or 12 in the
14 surrounding area.

15 Q. And when you're talking about
16 surrounding area, how are you defining that?

17 A. The Lake Ozark area.

18 Q. Are you aware as to whether any of those
19 other RV parks are located in close proximity to a
20 rock quarry?

21 A. None of them.

22 Q. Are they located in close proximity to a
23 landfill, whether it be solid waste or demolition?

24 A. No.

25 Q. Are you aware of any type of industrial

1 use that would be comparable to a rock quarry that is
2 located in close proximity to any of these other RV
3 parks located in the lake area?

4 A. No.

5 Q. Now, I asked a question as to whether
6 you advertise in newspapers, magazines, billboards.
7 You indicated no; is that correct?

8 A. That's correct.

9 Q. Is the only manner in which you
10 advertise your business to those outside of the lake
11 area in directories such as the Trailer Life
12 Directory?

13 A. Other than a billboard on our own
14 property and these directories, that's it.

15 Q. The billboard on your own property,
16 would that simply be signage --

17 A. Yes.

18 Q. -- which is indicating that, in fact,
19 the RV park is there?

20 A. Correct.

21 Q. Can you see the R -- RV park readily
22 from the highway as you drive by?

23 A. Yes.

24 Q. And can you see your sign?

25 A. Yes.

1 Q. The Trailer Life Directory itself, is
2 there some sort of a rating system that the Trailer
3 Life Directory utilizes --

4 A. Yes.

5 Q. -- relative to RV parks such as yours?

6 A. Yes, sir.

7 Q. And would you describe to Mr. Tichenor
8 the process by which Trailer Life Directory rates an
9 RV park such as yours?

10 MR. BROWNLEE: Well, I'm gonna object to
11 this as hearsay. This -- she's testifying as to
12 business practice of a person who's not here, and any
13 of her testimony would not be -- of course I couldn't
14 subject her to cross-examination on that. So I'm
15 gonna object to that portion of her describing what
16 their business practice is.

17 MR. McGOVERN: Missouri -- sorry.

18 HEARING OFFICER TICHENOR: Go ahead,
19 Mr. McGovern.

20 MR. McGOVERN: Missouri has certainly
21 long recognized exception to the hearsay doctrine
22 when dealing with publications such as directories.
23 In fact, in the case of Houston v. Burns,
24 December 9th, 1954, "As a general rule, a book or
25 other publication printed by a private person or

1 organization is not admissible as evidence for the
2 truth of the facts stated. However, in almost every
3 organized occupation, there are handbooks and other
4 publications containing information of everyday
5 professional and business need intended to be
6 circulated publicly and consulted by persons
7 interested, tested by their use and found by their
8 experience to be trustworthy and actually relied upon
9 in the work of the occupation."

10 This is such a directory and --

11 HEARING OFFICER TICHENOR: Wait a
12 minute. Just a moment. I understand it's such a
13 directory.

14 Ms. Fick, can you read the question back
15 to me, please?

16 THE COURT REPORTER: "And would you
17 describe to Mr. Tichenor the process by which Trailer
18 Life Directory rates an RV park such as yours?"

19 HEARING OFFICER TICHENOR: That's the --
20 that's the question, and I don't have any basis that
21 this witness is an expert or has that knowledge of
22 how a trailer -- when we're dealing with Trailer Life
23 Directory, does that rating.

24 I think the witness can testify to what
25 the ratings are as shown in that, and I'm -- I'm

1 fully willing to allow as far as the reference to
2 this and this documentation as an exception to the
3 hearsay rule.

4 The question asked was how -- whether
5 this witness knows how they go about making a rating,
6 and I don't have a basis upon which this witness can
7 testify.

8 MR. McGOVERN: And I'll lay that
9 foundation, but I don't think that was the question.
10 The question was --

11 HEARING OFFICER TICHENOR: The question
12 was just read back, Mr. McGovern.

13 MR. BROWNLEE: She just read it back.

14 MR. McGOVERN: It was her understanding
15 of the process that they go through which she can
16 certainly testify to based upon her own experience
17 and knowledge.

18 HEARING OFFICER TICHENOR: All right.
19 That's a different question. You're now asking the
20 process that they go through to give the rates, if
21 she knows that. All right. Ask your question.

22 BY MR. McGOVERN:

23 Q. Let me ask the question. Since you have
24 been involved in the operation of this RV park, has
25 your RV park appeared in Trailer Life Directory?

1 A. Yes.

2 Q. And is the RV park rated in some
3 fashion?

4 A. Yes.

5 Q. And are you familiar with the process by
6 which Trailer Life Directory goes through, at least
7 from your personal experience, in terms of getting to
8 that rating?

9 A. Yes.

10 Q. And can you tell Mr. Tichenor what do
11 they do relative to either coming to the park,
12 speaking to you or whatever it might be in the
13 process of trying to determine what rating they are
14 going to give Riverside [sic] RV Park?

15 A. Yes, I can do that. It's also stated
16 right here. It's identified at page 12 of the
17 Trailer Life Directory.

18 Q. And you're looking behind tab 3 of the
19 exhibit binder?

20 A. Yes, I am. It says about our rating
21 system and it explains there how the rating is done.
22 Representatives stop at our park, they thoroughly
23 inspect the park, they interview us, and they also
24 send a mystery camper through. And that's how they
25 base their decision on this rating system that's

1 stated right here.

2 Q. And you're referring to, again, just so
3 the record is clear, this would be the third page
4 behind tab 3; is that correct?

5 A. Yes, sir.

6 Q. Which is really -- it's a few pages
7 pulled out of the actual 2007 Trailer Life
8 Directory --

9 A. Yes, sir.

10 Q. -- a much larger volume in front of you?

11 A. Right.

12 Q. The different categories, could you
13 briefly explain to Mr. Tichenor your understanding of
14 the category "Completeness of facilities"?

15 A. Okay. The three categories are -- the
16 first one is "Completeness of facilities," the second
17 one is "Cleanliness and physical characteristics of
18 restrooms and showers" and the third one is "Visual
19 appearance and environmental quality."

20 Q. And within "Environmental quality," do
21 they then -- actually, for each of the categories, do
22 they then break down subcategories relative to the
23 rating?

24 A. Yes.

25 Q. And if you look down below "Visual

1 appearance and environmental quality," do you see one
2 for "Noise"?

3 A. Yes.

4 Q. And is there also something for "Park
5 setting"?

6 A. Yes.

7 Q. And "Site layout"?

8 A. Yes.

9 Q. And what is your understanding of noise?

10 A. I believe --

11 Q. Other than the obvious.

12 A. -- on the following page is a more
13 precise description of that.

14 Q. And what you're talking about is now on
15 page 4 of the exhibit; is that correct?

16 A. Correct.

17 Q. And if you look down, we'll say,
18 one-third up from the bottom, there's a reference to
19 noise. Is that what you're referring to?

20 A. Yes.

21 Q. And what is indicated as to what is
22 considered relative to the rating on noise?

23 A. "Park is distant enough from airports,
24 railroad tracks, interstates or other heavily
25 traveled highways or industrial areas to be -- as to

1 be relatively free from the noise such facilities
2 generate."

3 Q. And how about "Park setting"?

4 A. "Park and sites are well insulated from
5 unpleasant or commercial industrial or residential
6 surroundings or located in a natural setting."

7 Q. There's been some -- some testimony
8 based on questions asked of Mr. Atkisson that there
9 was a quarry located just to the north of the RV
10 park. Did you hear that?

11 A. Yes, yes.

12 Q. Before you became involved with the
13 Riverside [sic] RV Park, did you do any investigation
14 into the existence of that quarry?

15 A. We did.

16 Q. And would you describe to Mr. Tichenor
17 the investigation that you did?

18 A. When we were about to purchase the park,
19 we investigated the existence and length of time that
20 quarry would be in operation and discovered that it
21 was being shut down within a few years, and that's
22 one of the reasons we based our decision to buy the
23 property.

24 Q. During the period of time that quarry
25 was operating, do you have any knowledge as to

1 whether that impacted your rating?

2 A. Yes, I know for a fact it did.

3 Q. And how did it impact the rating?

4 A. It kept our rating at a lower rating.

5 Q. Once that quarry went into a closure
6 mode and discontinued active operations, did it
7 affect your rating?

8 A. We went up in our rating, yes.

9 Q. Are the other quarries located in the
10 Lake Ozark area also rated?

11 A. Excuse me?

12 Q. I'll ask the question again. I'm sorry.

13 Thank you. The other RV parks --

14 A. Yes, they are.

15 Q. -- located around the Lake Ozark area,
16 are they also rated?

17 A. Yes.

18 Q. And are they rated in Trailer Life
19 Directory?

20 A. Yes, some -- most of them are.

21 Q. Effectively, is that your competition?

22 A. Yes, it is.

23 Q. Other than Trailer Life Directory, do
24 you know of any other means by which people from
25 around the country would learn about your RV park or

1 the others located in the lake area?

2 A. No, sir.

3 Q. Is this comparable with a Fromm's Travel
4 Guide?

5 A. Yes, sir.

6 Q. How far away from the proposed site is
7 the RV park?

8 A. Approximately a mile.

9 Q. And would you please describe to
10 Mr. Tichenor some of your concerns if, in fact, this
11 site is approved and it begins the operation of a
12 quarry?

13 A. As stated in these ratings, these things
14 are important to travelers that we're insulated from
15 any kind of commercial activity, and our rating would
16 probably go down. As a matter of fact, I have a
17 statement from the people that --

18 MR. BROWNLEE: I'm gonna object to that
19 as hearsay.

20 HEARING OFFICER TICHENOR: Sustained.

21 THE WITNESS: It's my under -- my
22 feeling that our -- our rating would probably go
23 down. If our rating is less than other parks in the
24 area, people would most likely choose them over us,
25 and therefore, they wouldn't come to us and we

1 wouldn't have the income.

2 BY MR. McGOVERN:

3 Q. Over the last several years, has your
4 rating, in fact, gone up or has it gone down?

5 A. It's continually gone up.

6 Q. And do you have concerns that if, in
7 fact, a quarry operation commences within this one
8 mile of your property, that, in fact, it will affect
9 the rating negatively?

10 A. I'm very concerned.

11 Q. The other RV parks that are located in
12 the lake area, currently are all the ratings fairly
13 comparable?

14 A. I'd like to say, and I -- I think I know
15 for a fact that we're probably one of the highest
16 rated.

17 Q. And do you have concerns that that
18 rating again will go down --

19 A. Yes.

20 Q. -- to a level that will impact your
21 ability to compete with the other RV parks?

22 A. Yes.

23 Q. Do you and your husband, in fact, earn
24 your livelihood or part of your livelihood from the
25 operation of the RV park?

1 A. It's our sole income.

2 Q. What did you and your husband do prior
3 to the time that you began operating the RV park?

4 A. My husband had some -- was in trucking
5 and I was in finance business.

6 Q. Are there ever occasions in which a
7 caution warning is added to a description of an RV
8 park within Travel Life?

9 A. Yes.

10 Q. What is your understanding of a caution
11 warning?

12 A. Excuse me. There could be a warning
13 placed on the -- in the advertising or in the listing
14 that states there's some sort of activity or
15 objection to the park.

16 Q. If a consumer, a customer should
17 complain, are there occasions in which the complaint
18 would go to Travel Life -- Travel Life Directory?

19 A. Yes, that's most likely where it would
20 go.

21 Q. And does Travel Life Directory publish
22 those complaints in some fashion?

23 A. Yes.

24 Q. And if, in fact, there is blasting such
25 that you could hear the noise or there's dust

1 migration onto the trailers, are you concerned that
2 customers may, in fact, complain about the location?

3 A. Very concerned.

4 Q. Now, you've indicated generally some of
5 the RVs that come into your park. If you could,
6 describe for Mr. Tichenor in a little more detail the
7 vehicles that are actually brought in which are
8 renting some of these 75 sites that you have.

9 A. As I stated before, some of them are
10 million-dollar RVs. I know one to be exact, it's
11 well over a million, and that's not uncommon. We
12 have those types of RVs in our park all the time.
13 And anywhere from, you know, that down to small
14 tents. So there's all types of values there.

15 Q. And do you know what your latest rating
16 is?

17 A. Eight and a half, nine, eight and a
18 half.

19 Q. And when you say "eight and a half,
20 nine, eight and a half," you're rating that through
21 the three categories that are contained within the
22 Travel Life Directory?

23 A. Yes.

24 Q. And from your perspective, based upon
25 your understanding of Travel Life and your review of

1 other rated campgrounds, is that a high or very high
2 rating?

3 A. It's high.

4 Q. Other than Travel Life Directory, are
5 you aware of any other source by which consumers,
6 customers find out about your RV park?

7 A. There are a few other directories that
8 we also advertise in and the internet.

9 Q. And what are those?

10 A. There's one called Woodall's, AAA, Best
11 Holiday Travel, and then the local Lake of the Ozark
12 and Missouri guides.

13 Q. And those are also RV park guides of
14 some sort?

15 A. Yes.

16 Q. Do you also have repeat customers who
17 come either on a -- a monthly or yearly basis?

18 A. Yes, we do.

19 Q. And do you have any concern about losing
20 that business if, in fact, the setting or the
21 surroundings around your RV park should change?

22 A. Very concerned.

23 Q. And do you have any idea as to how much
24 of your business comes from customers who come back
25 on a regular basis?

1 A. I'm just gonna guess 50 percent.

2 Q. The other RV parks, can you give us a
3 general idea as to how close they are in terms of
4 miles to your RV park?

5 A. Miles to us?

6 Q. Yes.

7 A. The closest one is probably five miles.

8 Q. The closest?

9 A. Closest. Farthest --

10 Q. And how about the farthest?

11 A. -- would be 30 miles on the other side
12 of the lake.

13 Q. Do you have any estimate as to how many
14 visitors that you get during the course of the year?

15 A. No, I can't put a figure on that.

16 Q. Is there a period of time in which you
17 do close down the RV park?

18 A. Yes.

19 Q. And would you tell Mr. Tichenor the
20 period of time in which you do that?

21 A. We're closed from November the 15th to
22 March 1st.

23 HEARING OFFICER TICHENOR: Restate that,
24 please. I didn't hear the first part.

25 THE WITNESS: We're closed November the

1 15th through March the 1st.

2 BY MR. McGOVERN:

3 Q. Effectively, do you close during the
4 winter season?

5 A. Yes.

6 Q. And other those -- other than those
7 periods of time in which you are closed, do you
8 generally have people renting either some or all of
9 the various sites?

10 A. Yes.

11 Q. Is your RV park also serviced by the
12 sewer lines?

13 A. Yes, we are.

14 Q. And is there a sewer line that, in fact,
15 runs through your property?

16 A. Yes.

17 Q. And where does it run in relation to the
18 park itself?

19 A. Along the property line along the river.

20 Q. And do you have some concerns about the
21 fact that this sewer line in some fashion is going to
22 travel through the area which is now depicted as the
23 proposed quarry site?

24 A. Yes, I'm very concerned about that.

25 Q. Could you point out to Mr. Tichenor

1 where the sewer line is that runs adjacent or through
2 the RV park?

3 A. (Witness complied.) It goes along here.

4 Q. And just for the record, you are
5 effectively drawing a line in an easterly direction
6 from the bridge of Highway 54?

7 A. On the riverbank.

8 Q. Along the riverbank. And does your RV
9 park receive the -- also water from the plant?

10 A. No.

11 Q. Comes from a different source?

12 A. Yes.

13 Q. But the sewage -- sewer treatment comes
14 from --

15 A. Yes.

16 Q. -- and is serviced by the water --

17 A. Yes.

18 Q. -- the treatment plant; is that correct?

19 A. Right.

20 Q. If, in fact, that line should break, do
21 you have concerns about your RV park?

22 A. Yes, I absolutely do.

23 Q. And what would those concerns be?

24 A. The first concern is if that particular
25 line would break, there's no buffer between it and

1 the Osage River. The second concern is that our park
2 would be shut down completely, and if we did have
3 guests, they'd have to be asked to leave. So it
4 would greatly affect our income.

5 Q. Have you been provided any type of
6 assurances or information that would tell you as to
7 how long that your park would be closed in the event
8 of a failure of that sewer line?

9 A. No idea.

10 Q. Based upon information that's been
11 provided through you or to you through this entire
12 process, have you been given any information that
13 would suggest Magruder has the wherewithal to repair
14 a break in that sewer line?

15 A. Not that I'm aware of.

16 Q. Do you have any understanding as to
17 whether the bond that has been posted on this project
18 would, in fact, pay for the repair of a sewer line?

19 A. It's my understanding it would not.

20 Q. Have you been provided any information
21 that there is any source of funds available from
22 anywhere that would repair that sewer line in the
23 event of a break?

24 A. No.

25 Q. What concerns do you have if, in fact,

1 you have to either ask guests to leave or notify
2 guests who were coming to your park that, in fact,
3 they'll have to make other plans?

4 A. Not only the immediate loss, but future
5 loss because they probably wouldn't come back and
6 they'd probably tell their friends and they wouldn't
7 come either.

8 Q. Based on your experience with RV parks,
9 do you find that these RV people tend to be a tight
10 community?

11 A. Yes, I do.

12 Q. Do you find that they tend to speak to
13 each other --

14 A. They do.

15 Q. -- in a lot of your businesses --

16 A. A lot of our business --

17 Q. -- by word of mouth?

18 A. -- is that way.

19 Q. I'm sorry. Yes, by word of mouth?

20 A. Yes.

21 Q. You, in fact, encourage your customers
22 to tell others --

23 A. We do.

24 Q. -- about your park?

25 A. We do that.

1 Q. Is there any type of a discount if, in
2 fact, they refer others in?

3 A. No.

4 Q. Do you have some concerns about dust
5 migrating from this project onto some of these RVs
6 that are millions of dollars?

7 A. Yes, I have a lot of concern.

8 Q. And is that concern that, in fact, those
9 people will take their RVs to other locations in
10 which there wouldn't be that problem?

11 A. That's true, but they may also blame us
12 and expect us to take care of any damages.

13 Q. In terms of the access road coming off
14 Highway 54 into your project, that road actually
15 continues on towards the area of the quarry; is that
16 correct?

17 A. Correct.

18 Q. Do you know if, in fact, any quarry
19 traffic will travel down past your facility?

20 A. As far as I know, it's the only way they
21 can go.

22 Q. Have you seen any definitive plan that
23 would suggest that those trucks would go another
24 direction?

25 A. No.

1 Q. Do you know if there are going to be
2 trucks traveling into that quarry which are owned and
3 operated by others -- by other companies or
4 individuals other than Magruder?

5 A. I would expect there would be.

6 Q. And are you aware of any requirements
7 that you've at least seen thus far that would suggest
8 Magruder has any ability to control the direction or
9 manner in which those trucks are driven?

10 A. No.

11 Q. Do you have concerns about the fact that
12 those trucks will be traveling right past the
13 entrance to your RV park?

14 A. Yes.

15 Q. These larger RVs that you're referring
16 to, when they are leaving your RV park, do they have
17 to travel uphill to get to that point of the
18 intersection to turn right onto 54?

19 A. Yes, they do.

20 Q. Do they tend to travel very slowly to do
21 that?

22 A. Yes.

23 Q. The standpoint of the topography coming
24 from the quarry itself, would those trucks be
25 traveling downhill towards Highway 54?

1 A. They would.

2 Q. And would they be coming around a curve
3 right before the point at which your access is
4 located into the RV park?

5 A. Yes, they would.

6 Q. And do you have any concerns about the
7 safety of your customers --

8 A. Very concerned.

9 Q. -- either entering or exiting your RV
10 park?

11 A. Very concerned.

12 Q. Now, Woodriver Road, as you leave the RV
13 park, would you describe for Mr. Tichenor the road
14 itself? Is it asphalt, is it turning, does it go
15 uphill, what does it do?

16 A. When you access Woodriver Road from
17 our -- from Riverview RV Park, it is to the right, to
18 Highway 54 it is paved. To the left going up
19 Woodriver Road it's paved maybe 100 yards, and then
20 it turns to gravel.

21 Q. In terms of the RVs themselves, are some
22 of these in excess of 45 feet in length?

23 A. Yes.

24 Q. Are some of them in excess of 60 feet
25 with a fifth wheel?

1 A. Yes.

2 Q. Some of them are pulling trailers and
3 vehicles?

4 A. Yes.

5 Q. How far is the entrance to the RV park
6 from the intersection of Woodriver Road and
7 Highway 54?

8 A. Approximately 100 yards.

9 Q. And are there occasions in which
10 multiple vehicles are leaving your RV park in order
11 to gain access onto Highway 54?

12 A. Quite often.

13 Q. Are there ever occasions in which they
14 exit and turn left on Woodriver?

15 A. Not real often that they turn left.

16 Q. Do you have any concerns about the noise
17 that --

18 A. Yes.

19 Q. -- could potentially emanate from
20 blasting?

21 A. Yes.

22 Q. And would you please describe to
23 Mr. Tichenor your concerns about that?

24 A. Well, the campground is -- we advertise
25 it as a quiet, peaceful place, and if there's

1 blasting going on and everything shakes and moves,
2 it's not gonna be a very peaceful place.

3 Q. In fact, one of the categories of
4 "Visual appearance and environmental quality" would
5 encompass what you've just described; is that
6 correct?

7 A. That's correct.

8 Q. There's been some discussion with
9 documentation that warning sirens would be sounded
10 prior to the time that blasting would take place. Do
11 you have concerns about that?

12 A. I think that would alarm people.

13 Q. Do you think that's consistent with the
14 idea of operating a peaceful and quiet RV park?

15 A. No, I don't.

16 Q. The blasting itself, you've heard
17 testimony already today about -- by the noise from
18 that. Does that concern you as well in terms of
19 trying to reconcile a peaceful and quiet RV park with
20 blasting?

21 A. Yes, it's a big -- it's a big concern.

22 Q. You've indicated that you have some
23 concern about the fact that if there's a failure of
24 the sewer line, that this raw sewage would travel
25 directly into the Osage River. Does that concern you

1 as well?

2 A. Yes, it does.

3 Q. Regardless of your environmental
4 concerns, does that also concern you from the
5 standpoint of the business that you operate
6 immediately adjacent to the river?

7 A. Yes.

8 Q. And what are your concerns with that?

9 A. Well, pollution, number one, and we are
10 a recreational area where -- for fishing, and we
11 would lose that business also.

12 Q. Do people actually swim within the
13 river?

14 A. Some.

15 Q. Do they boat in the river?

16 A. Yes.

17 Q. Do you see them go out there in rafts
18 and tubes and things like that?

19 A. Yes.

20 Q. If, in fact, there was such a break,
21 would you feel compelled to warn them of the fact
22 there's now raw sewage in the river?

23 A. Yes.

24 Q. And do you believe that if, in fact,
25 this quarry goes in and operations proceed normally,

1 that it will negatively impact your and your
2 husband's livelihood -- livelihood at the Riverside
3 [sic] RV center?

4 A. Yes, I do.

5 Q. Is that why you are here today as a
6 petitioner?

7 A. That is it, that is why.

8 MR. McGOVERN: Nothing else,
9 Mr. Tichenor.

10 HEARING OFFICER TICHENOR: Thank you,
11 Mr. McGovern. Mr. Brownlee, cross-examination?

12 CROSS-EXAMINATION BY MR. BROWNLEE:

13 Q. Ms. Stockman, my name is Richard
14 Brownlee, and you and I met last Friday, you recall.
15 When did you and your husband acquire this property?

16 A. I believe it was 2001.

17 Q. And so you've operated it, what, seven
18 years?

19 A. Yes, sir.

20 Q. Okay. And are you and your husband the
21 sole shareholders of the LLC?

22 A. Yes, we are.

23 Q. So the two of you are either the owner
24 of the property, the underlying real property or the
25 RV business, correct?

1 A. Yes, yes.

2 Q. And you said that when you've been open,
3 you've been full on all weekends except when you've
4 been closed from November to March; is that correct?

5 A. Correct.

6 Q. And has that been a condition that's
7 existed since you-all purchased it pretty much back
8 in 2001?

9 A. No. It has grown to that.

10 THE COURT REPORTER: It has what, ma'am?

11 THE WITNESS: Grown.

12 BY MR. BROWNLEE:

13 Q. How -- tell me, how many years has it
14 been pretty much full on all weekends?

15 A. Probably the last two.

16 Q. And during that time when you were
17 operating it and you've owned it, the APAC quarry
18 across the river was operational, correct?

19 A. Part of the time.

20 Q. So, in fact, with that quarry, which
21 is -- let's -- let me ask you this: How far is --
22 was that quarry or is that quarry -- because it's
23 sitting right there now -- how far is that from the
24 campground?

25 A. Well, if you go to the out -- well, it

1 depends on which edge. The first side would be
2 across the river. I don't know how far that is.

3 Q. Tenth of a mile?

4 A. Maybe.

5 Q. Okay. And then the quarry's right
6 there, is it not?

7 A. Yes, it is.

8 Q. So that quarry's been operating, what, a
9 tenth of a mile from your RV park, and during that
10 time they've been doing blasting, correct?

11 A. Part of the time.

12 Q. And there's been dust there, correct?

13 A. A number of years back.

14 Q. And I assume truck noise; is that
15 correct?

16 A. At one time.

17 Q. And at this time -- during this time
18 when that big quarry -- huge quarry was there,
19 your -- your park was basically full on the weekends,
20 correct?

21 A. No, sir.

22 Q. So that's just -- well, it's been the
23 last two years?

24 A. Been the last two years we've been full
25 like that, yes.

1 Q. Now, do you have any idea how far the
2 blast -- blast site area of the Magruder quarry is
3 from your campground?

4 A. Not exactly.

5 Q. Do you know whether it's a half mile,
6 three quarters of a mile?

7 A. No, sir, I don't know.

8 Q. And so do you know -- if you don't know
9 how far it is, do you know whether dust is gonna
10 travel that far? Do you know that?

11 A. No, I don't.

12 Q. Do you know whether the blasting will be
13 discernible in terms of hearing it from that
14 distance?

15 A. I think you could.

16 Q. You think you could.

17 A. I think --

18 Q. Do you know that?

19 A. I don't know that for a fact, no.

20 Q. And when you -- when the -- and you're
21 familiar with the Happy Hollow -- or the -- Happy
22 Hollow site [sic], correct?

23 A. Yes.

24 Q. And are you familiar -- you were
25 familiar with that when it was permitted, correct?

1 A. Yes.

2 Q. And you didn't -- the permit was
3 granted; you didn't ask for a public hearing or
4 anything else, did you?

5 A. We did not.

6 Q. Okay. And that obviously is closer to
7 the camp -- your campground than what the Magruder
8 facility would be, correct?

9 A. Which one are you referring to? I'm
10 sorry.

11 Q. The Happy Hollow [sic] site.

12 A. Would be ...

13 Q. Is -- is closer?

14 HEARING OFFICER TICHENOR: Wait just a
15 minute.

16 MR. McGOVERN: Hudson Hollow.

17 MR. BROWNLEE: Where in the world --
18 it's like a cartoon character.

19 HEARING OFFICER TICHENOR: Well, that's --
20 yes, that's -- we've got to -- we don't want to go
21 there.

22 MR. BROWNLEE: Okay. I'm --

23 MR. McGOVERN: Sorry to interrupt,
24 but --

25 HEARING OFFICER TICHENOR: No, no

1 problem because I knew it wasn't Happy Hollow.
2 Hudson. Proceed, Mr. Brownlee. Write it down. Make
3 a note.

4 MR. BROWNLEE: I've corrected that.
5 Sorry.

6 HEARING OFFICER TICHENOR: All right.

7 BY MR. BROWNLEE:

8 Q. The Hudson Hollow site is actually
9 closer to your facility than the Magruder site,
10 correct?

11 A. Yes.

12 Q. Now, let me ask you a question. You
13 said noise is one of the real important
14 considerations?

15 A. Yes.

16 Q. And the location next to an interstate
17 is a consideration that this travel bulletin relies
18 upon, correct?

19 A. Yes.

20 Q. Do you have any idea -- well, let me --
21 how far is your office and your campground from
22 Highway 54 and the bridge?

23 A. It's not very far.

24 Q. What, 100 feet, 150 feet?

25 A. Maybe.

1 Q. How many semis go by there a day, seven
2 days a week, 24 hours a day, 365 days a year, do you
3 know?

4 A. I have no idea.

5 Q. Do you hear the trucks?

6 A. Very little.

7 Q. Yet they're within 100 feet of your
8 campground. How many -- do you have any idea how
9 many semis go by there?

10 A. No idea.

11 Q. Did you have any problem with the truck
12 traffic off of the APAC quarry? Did you hear their
13 trucks?

14 A. Yes, we did.

15 Q. So you hear the quarry trucks but you
16 don't hear the semis come by there?

17 A. Correct. The highway is above.

18 Q. It's above. I'm talking about the
19 trucks out of the APAC site. You said you heard the
20 quarry trucks but you didn't hear the semis; is that
21 correct?

22 A. We're insulated in the building. We
23 don't hear it.

24 Q. But you just said that you heard the
25 quarry trucks out of that APAC truck --

1 A. We did.

2 Q. -- out of the APAC site, but you didn't
3 hear the semis?

4 A. The APAC site is on the same level of
5 ground that we're on. The highway --

6 Q. It's right across the river.

7 A. -- is up above.

8 Q. I'm talking about the noise from the
9 highway.

10 A. We hear very little noise.

11 Q. And so if you're not hearing semi
12 trucks --

13 A. I'm not saying we don't hear them. We
14 just don't -- it's not -- it's not an issue.

15 Q. And has the -- your -- the rating book
16 ever rated -- or downgraded you because of your
17 proximity to the -- essentially an interstate, a
18 four-lane there?

19 A. No, because they visit the facility and
20 they know that they can't hear the highway.

21 Q. What's the difference between the
22 Magruder trucks that might service their site and
23 those trucks that have been servicing that APAC site
24 for all the years it's been in operation?

25 A. The APAC site hasn't been in operation

1 for a couple of years.

2 Q. What's the difference in the trucks,
3 any?

4 A. There haven't been any trucks in the
5 last two years.

6 Q. There's no trucks out of that --

7 A. Very -- very few.

8 Q. -- site? But the semi trucks, you don't
9 hear them, correct?

10 A. Sometimes.

11 MR. McGOVERN: Objection, asked and
12 answered.

13 HEARING OFFICER TICHENOR: Sustained.

14 BY MR. BROWNLEE:

15 Q. What are the roads on your RV park, what
16 do they consist of?

17 A. Gravel.

18 Q. They're gravel?

19 A. Yes, sir.

20 Q. And you're worried about dust from the
21 quarry potentially a half mile away and you've got
22 gravel roads on your facility?

23 A. We maintain our roads.

24 Q. Do they -- does it cause dust when you
25 have wind?

1 A. Yes, but we try to keep them watered
2 down.

3 Q. Do you have a watering truck?

4 A. Yes.

5 Q. What's it look like?

6 A. It's not a truck. We pull it behind the
7 lawnmower.

8 Q. Okay. And you've got no health issues
9 regarding this quarry, do you, ma'am?

10 A. No, sir.

11 Q. Nor does your husband?

12 A. No.

13 Q. Now, on this sewer line that's within
14 your property, where does it attach to the -- the
15 overall sewer system we're talking about?

16 A. I'm not sure exactly. It goes across
17 the end of the property.

18 Q. So it goes from basically the bridge to
19 the end of the property and then somewhere to get up
20 above the sewer plant, correct?

21 A. That's correct.

22 Q. But you have no idea where it goes?

23 A. Not exactly. I don't know the route it
24 takes after it leaves our property.

25 Q. And you're very concerned that if there

1 would be a potential break, that your sewer --
2 your -- your RV park may have to close down?

3 A. Yes.

4 Q. And you'd have to warn your guests of
5 the pollution in the river; is that correct?

6 A. We'd have to warn the guests that
7 there's no sewer service.

8 Q. Well, you mentioned your environmental
9 concern about warning boaters and float tubers. You
10 said you'd have to do that too, correct?

11 A. Well, if I have a fisherman and -- or
12 someone that's swimming in the river, I would most
13 likely tell them that.

14 Q. Well, are you familiar with the -- at
15 least two or three exceedances and releases in the
16 last two years at the sewer plant during the open
17 season?

18 A. No.

19 Q. So -- so when those occurred, did you
20 warn your guests --

21 A. I wasn't --

22 Q. -- did you tell them to stay out of the
23 water?

24 A. I wasn't aware of it.

25 Q. You weren't aware of it?

1 A. No, sir.

2 Q. Do you know whether any of those
3 releases or those operational problems had anything
4 to do with a quarry or any other industrial activity?

5 A. I'm not -- I have no idea what you're
6 referring to.

7 Q. During the rating changes, the eight and
8 a half to nine and the eight and a half, have those
9 changed?

10 A. Since when?

11 Q. Since -- in the last year.

12 A. Not in the last year, no.

13 Q. What about in the last two years?

14 A. Yes.

15 Q. What had -- what had they been before?

16 A. It was lower. It got raised. Whenever
17 the quarry went away over across the river, our
18 rating went up.

19 Q. What had they been -- what had they been
20 before?

21 A. I don't -- I think on that last rating,
22 it was a seven and a half or an eight. I'm not sure.

23 Q. That's still a high rating, is it not?

24 A. It's fair.

25 MR. BROWNLEE: I don't have any other

1 questions. Thanks, ma'am.

2 HEARING OFFICER TICHENOR: Mr. Duggan?

3 CROSS-EXAMINATION BY MR. DUGGAN:

4 Q. I do have a couple of questions for you.
5 Taking a look at the map, can you point out on that
6 map an area where an APAC quarry was proposed that
7 you objected to?

8 A. (Witness complied.) This section here.

9 Q. That's -- it looks from this angle --
10 we're looking at an -- an aerial -- it looks like a
11 cleared area; is that right?

12 A. Yes.

13 Q. Is that a cleared area?

14 A. Yes.

15 Q. Do you recall when that application was
16 made by APAC?

17 A. I could take a guess.

18 Q. You might have to sit back down again --

19 HEARING OFFICER TICHENOR: Yeah, take
20 your seat.

21 BY MR. DUGGAN:

22 Q. -- so the microphone can pick you up.

23 A. I don't know exactly. I'm gonna say '04
24 or '05. I don't really know for sure.

25 Q. Okay. So you had operated the trailer

1 park for a few years --

2 A. Yes.

3 Q. -- at that point? And you registered
4 your objection by letter; is that right?

5 A. Yes.

6 Q. Do you recall why you objected to the
7 quarry proposed for that particular location?

8 A. Basically the same issues we have now.
9 The noise, blasting, the dust, the smell would affect
10 the -- the campground.

11 Q. Do you know what happened to that
12 application?

13 A. It was denied.

14 MR. DUGGAN: No further questions.

15 HEARING OFFICER TICHENOR: Mr. Mauer?

16 CROSS-EXAMINATION BY MR. MAUER:

17 Q. Ms. Stockman, Steve Mauer. I don't
18 think we've met before. Nice to meet you. I'm here
19 on behalf of the City of Osage Beach and the City of
20 Lake Ozark and their Joint Sewer Board.

21 I want to clarify one thing about Hudson
22 Hollow. Mr. Atkisson already identified a map, that
23 the Hudson Hollow site is actually immediately to the
24 south of the sewage treatment plant --

25 A. Correct.

1 Q. -- up there in the little triangle. Do
2 you see that on the map?

3 A. Yes.

4 Q. Okay. Now, the Magruder site on the map
5 is kind of the pink, which is considerably farther to
6 the west --

7 A. Yes.

8 Q. -- than the Hudson Hollow site. Do you
9 see that?

10 A. That's correct, yes.

11 Q. All right. Now, looking at that map
12 now, can you tell me which is closer to your
13 property, the Magruder site or the Hudson Hollow
14 site?

15 A. The outer edges of the Magruder site
16 would be closer.

17 Q. All right. And is it your understanding
18 that according to the mine plan, that they intend to
19 mine within 50 feet of all the way around their
20 property?

21 A. That's my understanding.

22 Q. All right. So the mining that would
23 occur that Magruder is proposing, who would be
24 closer, Hudson Hollow or Magruder?

25 A. Magruder.

1 Q. And also, are you familiar with the
2 topography of how that land lies?

3 A. Somewhat.

4 Q. All right. Would the -- would the west
5 edge of Magruder's property be on the other side of
6 the hill such that it would be easier for noise and
7 dust to travel to your campground as compared to the
8 Hudson Hollow site?

9 A. Yes.

10 Q. All right. So to compare Hudson Hollow
11 versus the Magruder site, is that the same thing or
12 is that apples to oranges?

13 A. It's not the same thing.

14 Q. All right. And, in fact, ma'am, have
15 you ever seen any quarry trucks come running out of
16 the Woodriver Road coming from the Hudson Hollow
17 site?

18 A. No.

19 Q. In fact, do you know, has there ever
20 been any quarrying activities on that 15-acre Hudson
21 Hollow site?

22 A. There has not.

23 Q. All right. One last question. You --
24 you were asked about sewage in the river or in the
25 event that there is a break and sewage runs into the

1 river. Do you have any understanding of how long
2 your campground might have to close if, in fact, the
3 land surrounding your property or the river is
4 actually polluted by this quarry breaking a line?

5 A. I don't know exactly, but it would be a
6 very large task. I would imagine it would take a
7 long time.

8 Q. Okay. And is your property actually
9 below the level of the sewage treatment plant?

10 A. Yes, it is.

11 Q. Is -- is one of your concerns that if
12 the -- if the sewage treatment plant or line breaks,
13 that raw sewage could actually run and work its way
14 down to your property?

15 A. Yes.

16 MR. BROWNLEE: I'm gonna object. This
17 is just leading the witness in friendly
18 cross-examination. I'm gonna object.

19 HEARING OFFICER TICHENOR: And it's
20 assuming a whole lot of facts that we haven't got in
21 evidence yet. Mr. Mauer, I understand you want to
22 make your case for your client with these witnesses,
23 but it -- it really goes totally beyond appropriate
24 cross-examination because this witness has not
25 testified to anything that is contrary to the

1 position that I understand the Joint Sewer Board to
2 be advocating.

3 And I understand you consider it
4 cross-examination. I consider it direct examination
5 of a witness. So let's try to avoid the leading
6 questions, and if you have another question -- I
7 understood that to be your last, but if you wish to
8 try to rephrase that, then proceed.

9 MR. MAUER: Okay. I will. And for the
10 record, I understood the court's order on the -- the
11 order of questioning was that I was assigned to be
12 last in the cross-examination. My apologies if I --

13 HEARING OFFICER TICHENOR: And I
14 apologize. My e-mail listed you under
15 cross-examination, and it should not have. I was
16 simply trying to list the order and make it as simple
17 as possible. Proceed.

18 BY MR. MAUER:

19 Q. Ms. Stockman, do you -- do you have
20 concerns about what -- what might happen in the event
21 there is a sewage break and release such that the --
22 that raw sewage runs from the sewage treatment plant
23 towards the river?

24 A. Yes, I do have concerns.

25 Q. And what would that be?

1 A. The concerns would be the health and
2 safety of my -- of our campers as well as us that
3 live there.

4 Q. And would that -- would there also --
5 would there also be an impact potentially on the
6 livelihood of you and your husband and the operation
7 of the campground if there is a raw sewage break?

8 A. It would greatly affect us, not only
9 immediately, but in future -- in the future.

10 MR. MAUER: Thank you. Nothing further.

11 HEARING OFFICER TICHENOR: Redirect?

12 MR. McGOVERN: Thank you.

13 REDIRECT EXAMINATION BY MR. McGOVERN:

14 Q. Ms. Stockman, Mr. Brownlee asked you a
15 lot of questions about what you saw and what you
16 heard over at the old APAC quarry. Do you recall
17 that?

18 A. Yes.

19 Q. I think that's actually some good
20 questions because it gives us some idea of what
21 impact, if any, a quarry would have on your business,
22 because, of course, the Magruder site has never
23 operated; is that right?

24 A. Correct.

25 Q. And the Hudson Hollow site, did that

1 ever operate?

2 A. No.

3 Q. The APAC site, though, did operate,
4 didn't it?

5 A. Yes.

6 Q. What noises -- what truck noises or
7 tractor noises did you hear from that site?

8 A. We heard trucks being loaded when the
9 rocks loaded into the trucks. It sounds like an
10 explosion. When the trucks back up, they beep,
11 usually very, very early in the morning, and then, of
12 course, the noise of the engines.

13 Q. The beeping noise, what you're talking
14 about is the backup warning that is on the back of
15 those tractors and other equipment operated at a
16 quarry?

17 A. Yes.

18 Q. Could you also hear the crushing
19 operation itself?

20 A. Yes.

21 Q. You're talking about the rock being
22 loaded into the trucks, you're talking about the
23 tractors actually scooping up that rock in front-end
24 loaders and putting it in the back of the dump trucks
25 themselves?

1 A. Yes.

2 Q. You also indicated that there was dust
3 produced at that site. Do you recall that?

4 A. Yes.

5 Q. And would you describe to Mr. Tichenor
6 the dust that you observed generated from that quarry
7 located in close proximity to the park?

8 A. We saw dust there when they were
9 blasting, we saw dust there when -- just in their
10 general operation.

11 Q. Were there ever occasions in which that
12 dust would migrate onto your property?

13 A. Occasionally.

14 Q. Would that be dependent on whether or
15 not the fact the wind was blowing in that direction?

16 A. Yes.

17 Q. During the period of time that that
18 quarry was, in fact, in operation, were all of your
19 sites always leased?

20 A. No.

21 Q. I think you indicated in response to
22 Mr. Brownlee's questions that the first time that
23 happened was sometime after that quarry effectively
24 ceased operations; is that right?

25 A. Yes.

1 Q. During the period of time that the
2 quarry was in operation, did you have difficulty
3 filling all of your sites during your high season?

4 A. Yes, we did, and we also lost people
5 because of that. They --

6 Q. Were there occasions in which you
7 received complaints because of the operation of the
8 quarry?

9 A. Yes.

10 Q. Were there occasions in which you got
11 complaints because you hadn't told people that, in
12 fact, there was an active quarry operation in close
13 proximity to your park?

14 A. Yes.

15 Q. Has your income, in fact, or your
16 livelihood, the money that you generate from the RV
17 park, has that increased since the time that the
18 operation of the APAC facility had ceased?

19 A. Yes.

20 Q. And has it done so consistently since
21 those operations have ceased?

22 A. Yes.

23 Q. Do they blast anymore at that site?

24 A. No.

25 Q. Do you hear those trucks beeping early

1 in the morning anymore?

2 A. No.

3 Q. How early did they, in fact, begin
4 operating?

5 A. Daylight. So like sometimes it was
6 5:30.

7 Q. And how late into the evening or into
8 the night would you hear the operations?

9 A. There was a time when they operated at
10 night.

11 Q. Since the APAC operations have ceased,
12 has your income, your livelihood increased?

13 A. I'm sorry? Say that --

14 Q. Has the livelihood, the money that you
15 and your husband earned, has that increased since the
16 closure and the cessation of those operations?

17 A. Yes.

18 Q. Are you concerned that if, in fact, the
19 Magruder site begins operating in close proximity to
20 yours, that, in fact, your livelihood will decrease?

21 A. Yes.

22 Q. Are you concerned that the very
23 complaints that you received while APAC was operating
24 are gonna renew and you'll start getting those
25 complaints again?

1 A. Yes.

2 Q. Are you concerned about the noise, the
3 dust, all those various things that you saw several
4 years ago?

5 A. Yes.

6 Q. You were asked a question as to whether
7 or not you objected to Hudson Hollow.

8 A. Yes.

9 Q. Do you recall that?

10 A. Yes.

11 Q. I think you answered you did not; is
12 that right?

13 A. Correct.

14 Q. Why didn't you?

15 A. At the time when they applied for the
16 two pieces to be mined, the one was denied; the other
17 one, it was farther away and we were under -- under
18 the understanding that it would be a temporary,
19 possibly six-month operation.

20 Q. Was --

21 A. And that was our understanding from
22 APAC.

23 Q. And did you understand that, in fact,
24 the water treatment -- the water facility would have
25 some control over those operations?

1 A. That was our understanding.

2 Q. And is that the reason you didn't object
3 to that site?

4 A. That's correct.

5 Q. Regarding this particular site, have you
6 been provided any assurances that it will be
7 temporary?

8 A. No.

9 Q. Have you been provided any assurances
10 that it will be anything other than a full-fledged
11 quarry?

12 A. No.

13 MR. McGOVERN: I don't have anything
14 further.

15 HEARING OFFICER TICHENOR: Any recross,
16 Mr. Brownlee?

17 MR. BROWNLEE: Briefly.

18 RECROSS-EXAMINATION BY MR. BROWNLEE:

19 Q. You testified, I believe, that you're
20 pretty familiar with the mine plan, that they were
21 gonna mine all 200 and some acres. Are -- are -- do
22 you have any idea really what's in that mine plan?

23 MR. McGOVERN: I would object that it
24 mischaracterizes the witness's testimony. I don't
25 think she provided any testimony about familiarity

1 with the mine plan.

2 HEARING OFFICER TICHENOR: She
3 testified -- she testified relative -- she was
4 questioned under Mr. Mauer originally about the
5 location and understanding of the mine plan.

6 Objection is overruled.

7 BY MR. BROWNLEE:

8 Q. Do you know what's in the mine plan
9 beyond just briefly perusing it?

10 A. All I know is the amount of acreage
11 they've applied for.

12 Q. And do you know how much of that will be
13 mined and when it might be mined?

14 A. No.

15 Q. Have you reviewed the blast plan?

16 A. No.

17 Q. Do you have any idea where blasting
18 is -- is at least planned to start for this facility?

19 A. No.

20 Q. Do you have any idea how far that is
21 from your RV park?

22 A. No.

23 Q. We've talked about this Hudson Hollow
24 and what your understanding was about limitations.
25 Have you reviewed that permit?

1 A. No.

2 Q. Do you know whether there are any
3 restrictions whatsoever in how that can be operated
4 and when it can be operated and how much stone can be
5 removed and what hours it can be operated?

6 A. No.

7 Q. Do you know whether there's anything in
8 the lease agreement between the Lake Ozark/Osage
9 Beach joint sewer treatment plant and that facility
10 that has any restrictions on the way it's operated?

11 MR. McGOVERN: Objection. Best evidence.

12 HEARING OFFICER TICHENOR: Overruled.

13 Do you know?

14 THE WITNESS: Do I know -- I do not know
15 it for a fact. I just --

16 BY MR. BROWNLEE:

17 Q. Have you read the release agreement?

18 A. No, I haven't.

19 Q. So you -- what, you've just been told
20 that there was some restrictions?

21 A. Yes.

22 Q. And who told you that?

23 A. I don't recall.

24 Q. It wasn't the mayor?

25 A. Possibly.

1 MR. BROWNLEE: I think that's all.

2 Thanks very much.

3 HEARING OFFICER TICHENOR: Mr. Duggan,
4 any recross?

5 MR. DUGGAN: No.

6 HEARING OFFICER TICHENOR: Thank you,
7 sir. Mr. Mauer, anything further?

8 MR. MAUER: No, sir.

9 HEARING OFFICER TICHENOR: Are you sure?

10 MR. McGOVERN: I've got one question.

11 HEARING OFFICER TICHENOR: Mr. McGovern,
12 do you have re-redirect?

13 FURTHER REDIRECT EXAMINATION BY MR. McGOVERN:

14 Q. Ms. Stockman, Mr. Brownlee has asked you
15 about what other people have said to you in terms of
16 Hudson Hollow. You indicated that you had some
17 understanding about what they were going to do. What
18 else were you told?

19 A. Like I said, this was back in 2005 or
20 whenever the -- whenever it was that there would be a
21 limit to the time that it would be mined and that it
22 was the sewer -- the Joint Sewer Board would have
23 control over what they did there, the amount of
24 blasting or the type of blasting they did.

25 Q. And do you recall when these discussions

1 took place, approximately how many years ago?

2 A. Five years ago, four years ago.

3 Q. Have they ever mined any rock out of
4 that site --

5 A. No.

6 Q. -- since those discussions took place?

7 A. No.

8 MR. McGOVERN: Nothing further.

9 QUESTIONS BY HEARING OFFICER TICHENOR:

10 Q. Ms. Stockman, just to help the hearing
11 officer understand, I'm very familiar with the
12 topography, but that doesn't put it on the record as
13 to why I'm asking you the questions. The proposed
14 quarry site lies to the southeast of your RV park,
15 correct?

16 A. Correct.

17 Q. And between that proposed site, the
18 topography, is it not such that you are basically at
19 river level, a little above it?

20 A. Yes.

21 Q. And directly to the southeast of you,
22 there's a ridge, is there not?

23 A. Yeah, I think so.

24 Q. Pardon me?

25 A. Yes.

1 Q. And that ridge is significantly above
2 both your trailer park and Highway 54, is it not?

3 A. I think so.

4 HEARING OFFICER TICHENOR: No further
5 questions. You're excused. Call your next witness,
6 Mr. McGovern.

7 MR. McGOVERN: Do you want to go off the
8 record?

9 MR. BROWNLEE: Could we just have a
10 little bench conference here?

11 HEARING OFFICER TICHENOR: We're off the
12 record.

13 (A BENCH CONFERENCE WAS HELD.)

14 HEARING OFFICER TICHENOR: All right.
15 We'll take a recess and reconvene and hear from a
16 couple of other witnesses.

17 (A RECESS WAS TAKEN.)

18 HEARING OFFICER TICHENOR: The hearing
19 will come to order. In conference with the attorneys,
20 for the benefit of the spectators, we originally were
21 scheduled to conclude at 9:00. Mr. McGovern believes
22 that -- that he can present the remainder of his
23 witnesses so we do not have to come back tomorrow
24 night. That makes all of the lawyers happy as well
25 as Ms. Fick, right? So we're going to proceed.

1 And, learned Counsel, I do appreciate
2 your examination, and I know you're trying to get
3 points made in the record, but remember, we don't
4 have a jury that you have to drill this into. Please
5 give your hearing officer a little bit of credit.

6 I assure you I read my transcripts of
7 hearings more than once. I am diligent in marking
8 areas that I need to address based upon the law that's
9 applicable to the case. And we've really been plowing
10 over some ground more than two times, and that's not
11 good farming practice and it's not good procedure for
12 us.

13 So listen attentively and don't assume
14 that we have to go over a matter again and again for
15 me to get it.

16 With that, Mr. McGovern, will you call
17 your next witness.

18 MR. MCGOVERN: Mary Denton.

19 HEARING OFFICER TICHENOR: Ms. Denton,
20 will you come forward to be sworn.

21 (The witness was sworn.)

22 DIRECT EXAMINATION BY MR. MCGOVERN:

23 Q. Ms. Denton, would you state your name
24 for the record.

25 A. Mary W. Denton.

1 Q. And Ms. Denton, what is your current
2 address?

3 A. 170 Woodriver Road.

4 Q. And where do you live in relation to the
5 proposed Magruder site? Could you go up to the
6 exhibit and point out to Mr. Tichenor approximately
7 where on Woodriver Road your house would be?

8 A. (Witness complied.) Right there.

9 HEARING OFFICER TICHENOR: Your counsel
10 can't see.

11 THE WITNESS: You see where the little
12 clearing is?

13 HEARING OFFICER TICHENOR: That little
14 open spot?

15 THE WITNESS: Right there. There's the
16 lane going to it, and this would be Woodriver Road.

17 HEARING OFFICER TICHENOR: All right.

18 BY MR. McGOVERN:

19 Q. And do you have any estimate as to
20 approximately --

21 HEARING OFFICER TICHENOR: Go ahead and
22 have a seat. Sorry.

23 BY MR. McGOVERN:

24 Q. -- any estimate as to approximately how
25 far your home is in relation to the proposed quarry

1 location?

2 A. Quarter of a mile would probably be at
3 the closest point up to half a mile on down farther.

4 Q. Ms. Denton, consistent with the hearing
5 officer's comments, we'll get right to the point. Do
6 you have any type of a physical illness or condition
7 for which you have some concerns about the fact there
8 may be a quarry located approximately one quarter
9 mile from your home?

10 A. Yes, sir. I have a lot of allergies,
11 most of which are related to an asthmatic condition
12 that I have been under treatment for for a number of
13 years. These illnesses, I cannot tolerate dust.
14 There are a lot of things I can't tolerate, but dust,
15 fuel fumes, chemical -- you know, heavy chemical
16 smells, those are all trigger points for me that I
17 have problems with.

18 Q. And how long have you experienced this
19 condition?

20 A. 35 years.

21 Q. Has that condition become worse or has
22 it remained constant over these last several years?

23 A. I have -- at different times of the year
24 it manifests itself. I have problems in different
25 times of the year.

1 Q. Are you currently prescribed any
2 medication that you take in order to treat the
3 symptoms you've just described?

4 A. Yes, sir. I have to have an injection
5 every two weeks, and I also have a inhaler as well as
6 a -- Aminophylline which -- it's a pill when I need
7 it.

8 Q. And what is the --

9 HEARING OFFICER TICHENOR: Could you spell
10 that, please, so -- I'm not insinuating, Ms. Fick,
11 that you can't. I just ...

12 THE WITNESS: A-m-i-n-a-p-o-h-l-i-n [sic].

13 HEARING OFFICER TICHENOR: All right.

14 Thank you.

15 BY MR. McGOVERN:

16 Q. And the injection that you receive every
17 two weeks, what is it that you're actually getting,
18 what type of medicine?

19 A. It's -- it's called antigen, and what it
20 is, is a compound that's made from the origins that I
21 am allergic to to try to boost my immune system to
22 fight from, you know, not having asthma attacks,
23 basically, and other allergy attacks.

24 Q. And you indicated that you also utilize
25 an inhaler; is that correct?

1 A. Yes, sir.

2 Q. And do you know what type of medication
3 comes from the inhaler?

4 A. Epinephrine.

5 Q. You have that in your hand there?

6 A. Yes. I'm nervous.

7 HEARING OFFICER TICHENOR: You don't
8 have to be nervous.

9 BY MR. McGOVERN:

10 Q. And could you tell Mr. Tichenor what
11 function or what purpose do you use the inhaler for?

12 A. It's a bronchial dilator when I feel
13 that I'm going into a bronchial spasm that, you know,
14 triggers the asthma. It's a bronchial dilator. It's
15 kind of a rescue-type inhaler.

16 Q. Could you generally, then, describe --
17 and you've told us some of these already -- some of
18 these symptoms or these effects that you have when
19 you are in a situation in which there is dust or some
20 of these other trigger events such as fuel or high
21 chemical?

22 A. Uh-huh.

23 Q. What happens to you physically?

24 A. It can manifest itself anywhere from
25 sneezing to itchy eyes to -- basically, what it -- it

1 does is it triggers an asthma attack at which point I
2 cannot breathe and I have to get medication.

3 Q. Such as the inhaler?

4 A. Inhaler or if it gets bad enough, I have
5 to take another injection other than the one --
6 whatever I have every two weeks.

7 Q. Are there any injections that you can
8 actually inject yourself?

9 A. Yes, sir.

10 Q. Give to yourself?

11 A. Yes, sir.

12 Q. The ones that you do every two weeks, do
13 you do that yourself?

14 A. My son-in-law does it for me.

15 Q. Are there any other medications that you
16 take?

17 A. No, sir.

18 Q. Are there any restrictions on your
19 activity because of the condition you've just
20 described?

21 A. I can't be around a lot of dust, mold is
22 an offender, I can't be around a lot of chemical
23 fumage, diesel is a big irritant.

24 Q. And what concerns do you have if, in
25 fact, the quarry were to begin operating within a

1 quarter mile of your home or for that matter within a
2 mile of your home?

3 A. Can I speak of what happened to me with
4 the quarry across the river from me?

5 Q. Certainly.

6 A. When the wind was blowing right, I got
7 dust from it, I got fumes from the asphalt plant,
8 from the trucks. There were times that it just -- I
9 couldn't go outside.

10 Q. And did that cause or were those the
11 triggering events that you referred to?

12 A. Yes.

13 Q. And would they exasperate [sic] or make
14 your condition worse?

15 A. Yes, sir.

16 Q. When you're talking about the quarry
17 across the river, is that the APAC quarry --

18 A. Yes, sir.

19 Q. -- you're speaking of? And how long has
20 that been closed?

21 A. The asphalt plant, I believe, has been
22 gone almost a year and a half to two years.

23 Q. And since the asphalt plant has been
24 shut down, has your condition improved?

25 A. Oh, yes. I mean, I just -- I don't have

1 that irritant present.

2 Q. And what about the dust? Has there been
3 as much dust that has traveled or migrated to your
4 property since the quarry was closed?

5 A. I can't say that I had a lot of dust
6 that I knew was coming from that quarry because I do
7 have a substantial amount of trees in between that
8 particular quarry and my home.

9 Q. You have a substantial amount of trees
10 between the proposed site and your home?

11 A. Not as many, no. I have the road -- the
12 main road that -- that will be connecting the two
13 properties is pretty close to the house.

14 Q. Other than the physical condition you've
15 just described, you also have some safety concerns
16 relative to the truck traffic that will travel along
17 the roadway surrounding this quarry?

18 A. There is a very sharp curve in the
19 middle of -- well, from the treatment plant, we come
20 around -- I'll show you.

21 Q. I was gonna say --

22 A. Sure.

23 Q. -- help us point it out.

24 A. Sure. This is a very sharp curve
25 (indicated).

1 Q. Which road is that?

2 A. This is Woodriver Road.

3 Q. All right.

4 A. And this -- my driveway comes right off
5 of here. My daughter was hit by a car, and luckily,
6 she did not, you know, sustain very -- she did have
7 to go to the hospital, but she wasn't hurt that bad.
8 But truck traffic along here will just -- it will be
9 very dangerous.

10 Q. And what is the topography running
11 from -- if you move farther up Woodriver Road to the
12 south? As you travel towards that sharp curve, do
13 you travel downward to that or up?

14 A. This is all uphill. From where you come
15 off the highway, it's a very steep hill. There's
16 another curve right here, you can see this. This is
17 my -- where my lane goes in here and then it goes
18 down to the treatment plant road, then you go around
19 another curve here (indicated).

20 Q. If you were to travel the other
21 direction, Ms. Denton, would you be traveling
22 downhill --

23 A. Yes, sir.

24 Q. -- into that curve?

25 A. Yes, sir.

1 Q. So these trucks carrying the aggregate
2 material would be traveling down the hill, have to
3 make it around that curve --

4 A. Now, this would be flat here. This
5 would not be a downhill situation right here. That
6 would be flat in -- in the curve itself.

7 Q. And is that a curve in which you can see
8 all the way around the curve if you were coming up
9 from Highway 54?

10 A. No.

11 Q. Would you describe it as a blind curve?

12 A. It's totally blind from both directions.

13 Q. And does that concern you in terms of
14 any track -- truck traffic that may travel on that
15 road?

16 A. Absolutely, absolutely. My family -- my
17 daughter and her family also have a home here. They
18 have a small child. You know, this is just -- this
19 is totally a blind curve here (indicated).

20 Q. Do you have any concerns about either
21 your grandchild or other children who play on or
22 about Woodriver Road?

23 A. Yes, sir. My neighbors over here have
24 grandchildren. I think they have several small
25 grandchildren. They're all -- you know, they're out

1 there playing. Our neighbor over here, he has a
2 small child. He never --

3 Q. When you're saying "over here," you're
4 talking now to the inside of that sharp curve?

5 A. Yes, right up here, Mr. Zawislak's home.
6 And he has a small --

7 MR. BROWNLEE: I'm gonna object. She's
8 not the spokesman for the neighborhood. She's here
9 to testify --

10 THE WITNESS: Well, I --

11 HEARING OFFICER TICHENOR: Just a
12 minute. Let Mr. Brownlee speak.

13 MR. BROWNLEE: This is -- this is --
14 we're here for her concern as a party to this
15 proceeding, not for everybody else in the
16 neighborhood. Whether they have small children or
17 have concerns is just pure speculation.

18 HEARING OFFICER TICHENOR: No, I don't
19 think it's speculation. The witness can testify from
20 her own knowledge of the existence of a person's
21 living there.

22 MR. BROWNLEE: Okay.

23 HEARING OFFICER TICHENOR: I'm gonna
24 allow some leeway simply with the understanding that
25 you are sharing these as your concerns for these

1 other residents along Wooddriver Road.

2 THE WITNESS: Yes, sir.

3 HEARING OFFICER TICHENOR: All right.

4 Proceed.

5 BY MR. McGOVERN:

6 Q. With that in mind, and I accept that
7 clarification, do you have concerns for other small
8 children who either play on or near Wooddriver Road?

9 A. Absolutely.

10 Q. And can you point out to Mr. Tichenor
11 where those other children live?

12 A. We have the Weeks, their -- they have
13 grandchildren, Mr. Zawislak has a home up in this
14 area --

15 Q. And is your --

16 A. -- he has a small son.

17 Q. If you could, describe where on
18 Wooddriver Road that would be --

19 A. Okay.

20 Q. -- in relation to your house.

21 A. His driveway comes right across here
22 (indicated).

23 Q. Right across from yours?

24 A. Yes, sir.

25 Q. All right.

1 A. And so his home is up in here. You have
2 another home over in here (indicated).

3 Q. Which would be just south of your home?

4 A. Yes, sir. There are two homes right
5 here and one up in here (indicated).

6 Q. And you're pointing to those -- they
7 appear to be clearings just south of your home. They
8 are --

9 A. Yes, sir.

10 Q. -- next to each other?

11 A. Yes, sir.

12 Q. And there are children there as well?

13 A. Yes, sir.

14 MR. McGOVERN: Thank you. I don't have
15 anything further.

16 HEARING OFFICER TICHENOR: Hearing
17 officer has nothing at this time. Mr. Brownlee?
18 CROSS-EXAMINATION BY MR. BROWNLEE:

19 Q. Ms. Denton, my name is Richard Brownlee
20 and I'm representing Magruder Limestone Company in
21 this proceeding. Good evening. How long have you
22 owned the property where you have testified that you
23 live?

24 A. 20 years.

25 Q. So that would be, what, 1989 or longer?

1 A. Yes, sir.

2 Q. And have you had these health problems
3 consistently during that period, since you said
4 you've had them for 35 years?

5 A. Yes, in one form or another.

6 Q. Okay. And have you -- who's your
7 treating physician?

8 A. James W. Willoughby.

9 Q. And where is he located?

10 A. Liberty, Missouri.

11 Q. Okay. And has he -- do you have any
12 diagnosis for the exact kind of things that are your
13 allergins; that is, that you're allergic to, for
14 example, ragweed or oak pollen and --

15 A. Sure.

16 Q. Is it a huge, long list?

17 A. Yeah.

18 Q. Can you describe to me, for example,
19 some of the natural things that you're allergic to,
20 what are they?

21 A. Some pollens, oak, grass, some grasses,
22 some flowering plants, molds.

23 Q. And you've had those, what, for 35
24 years?

25 A. Yes, sir.

1 Q. And you've lived in the -- what appears
2 to be in the midst of an oak forest for how long, 20
3 years?

4 A. Uh-huh.

5 Q. And can you tell me how you separate
6 dust from a quarry from oak pollen that you're
7 allergic to?

8 A. Different things affect me in different
9 ways.

10 Q. But can you tell the difference? That
11 is --

12 A. Absolutely.

13 Q. -- you know a dust allergy versus an oak
14 allergy?

15 A. The only times the oak bother me is when
16 they are blooming.

17 Q. Pollenating?

18 A. Yes, sir.

19 Q. The yellow, greenish --

20 A. Yes, sir, in spring.

21 Q. But you're allergic -- how many things
22 are you allergic to that might come in the forest
23 that you've chosen to live in?

24 A. Right off the top of my head, I don't
25 know. I'd have to get a copy of that from my

1 physician.

2 Q. Okay. And on the roads that you've
3 described, according to this map, which I didn't
4 prepare, there's apparently a number of different
5 ways to get from the proposed Magruder site out to
6 Highway 54; is that correct?

7 A. There are two ways.

8 Q. Well, you showed me the one with the
9 dangerous blind corner and U-turn.

10 A. Uh-huh.

11 Q. Is there another way to get from where
12 the Magruder site is from over on the road --

13 A. Sure.

14 Q. -- without going over near your
15 property?

16 A. No. I mean, I -- I have to go one of
17 two ways: This way would be the shortest to 54.
18 This way you'd have to come all the way out here and
19 get to D Road which --

20 Q. When you come down -- let's see where
21 the Magruder property --

22 A. Uh-huh.

23 Q. -- put your -- yeah, right there is
24 where your finger was.

25 A. Uh-huh.

1 Q. Now, what's that road that when you head
2 down towards your property that goes to the left?
3 It's marked as a black --

4 A. That would be --

5 Q. No, no, no. Right --

6 A. This?

7 Q. Yes, ma'am, that go -- goes to the left
8 there.

9 A. Okay. That would be --

10 Q. No, left. You're going to the right.

11 A. That is Woodriver Road.

12 Q. Okay. What's the road to the left that
13 cuts over and hits Woodriver Road?

14 A. That would be Mr. Zawislak's driveway.

15 Q. Okay. What's -- come over this -- come
16 over towards Mr. Duggan over this -- that road you
17 have your finger on.

18 A. That, I believe -- well, let's see. I
19 don't ...

20 Q. You've got that --

21 A. It's gonna have -- it's another driveway
22 but this does not intersect on the road. This is, I
23 believe, Mr. Feesmail (phonetic spelling) on this.

24 Q. It does -- does it go through or not?

25 A. No, sir. It's just like a little --

1 it's an old logging road, is basically what it was.
2 It's not a thoroughfare at all that's -- that's used.

3 Q. Has anyone told you how the Magruder's
4 trucks plan to access this facility?

5 A. No, sir.

6 Q. Has anyone told you -- do you know where
7 the blast site, where they're planning on actually
8 doing the -- the quarrying in this facility?

9 A. Somewhere within this acreage.

10 Q. Okay. But you don't know the exact
11 location?

12 A. No, I don't know the specific, no, sir.

13 Q. And would that location have any
14 dependency on whether the prevailing wind might blow
15 directly on your property or towards another
16 direction?

17 A. Depending upon which way the wind would
18 go.

19 Q. Which way does the wind -- does it
20 typically blow from the southeast or direction -- in
21 this area or not -- or southwest to the northeast?

22 A. It comes from all different directions
23 depending on, you know, what the weather conditions
24 are.

25 HEARING OFFICER TICHENOR: Do you need

1 the witness with the map further?

2 MR. BROWNLEE: No, I don't think so.

3 BY MR. BROWNLEE:

4 Q. Thank you, ma'am. I'm sorry.

5 A. That's all right.

6 Q. Do you know whether the facility across
7 the river, the APAC facility, is really closed?
8 We've had testimony in your questions regarding that.

9 A. As far as asphalt manufacturing, that's
10 gone. I -- I -- there is some activity in there, but
11 I don't know if it's just their, I think, kind of
12 straightening out that property for a resale-type
13 situation. I don't know.

14 Q. They're gonna have economic development
15 on that site, do you think?

16 A. That's what we've heard.

17 Q. Do you know what it would be?

18 A. We've heard rumors, but no, sir, I have
19 no factual --

20 Q. It wouldn't be Cabela?

21 A. Could be. You never know.

22 Q. When the Hudson Hollow facility was
23 permitted, were you living there then?

24 A. Yes, sir.

25 Q. Did you have any part of the protest on

1 that facility?

2 A. Yes, sir.

3 Q. What did you do?

4 A. We really didn't do anything as far as
5 Hudson Hollow's concerned because as soon as they --
6 they -- from my understanding, which is pure
7 speculation, I have no proof of this, they were going
8 to use that, I think, to maybe make the treatment
9 plant -- to do something at the treatment plant.

10 When they figured out that -- I -- I
11 think there was a potential for some damage, and I
12 think that I heard from someone that worked at APAC
13 they'd abandoned it and were going to -- so it -- you
14 know, it's all speculation.

15 Q. All right. Okay.

16 A. There -- to my knowledge, it was never
17 any blasting there. I do know that they took a few
18 loads of dirt out of there, but there was never any
19 dynamiting done.

20 Q. They scraped off --

21 A. Yes, sir.

22 Q. -- the side of the facility, correct?

23 A. Yes, sir.

24 Q. Do you know whether it's presently
25 available for quarrying? Are there any restrictions

1 now to your knowledge?

2 A. I have no idea.

3 MR. BROWNLEE: I think that's all I
4 have. Thanks.

5 HEARING OFFICER TICHENOR: Mr. Duggan?

6 MR. DUGGAN: I have no questions.

7 HEARING OFFICER TICHENOR: Mr. Mauer?

8 MR. MAUER: No questions.

9 HEARING OFFICER TICHENOR: Oh, thank
10 you. I have no questions.

11 MR. McGOVERN: Just real quickly.

12 HEARING OFFICER TICHENOR: Oh, I'm
13 sorry. Mr. McGovern, redirect.

14 REDIRECT EXAMINATION BY MR. McGOVERN:

15 Q. Mr. Brownlee had asked you about your
16 doctor's diagnosis and what he had told you about the
17 allergies. What did he tell you about -- bless you.
18 What did he tell you about dust and the manner in
19 which dust could affect your condition?

20 A. I have a letter that I received from him
21 today if you would --

22 MR. BROWNLEE: No.

23 THE WITNESS: Okay. He said -- can I
24 read it?

25 MR. BROWNLEE: No, no, no. That's

1 hearsay.

2 HEARING OFFICER TICHENOR: No, wait,
3 wait, wait, wait, wait.

4 MR. McGOVERN: No, it's not. You asked
5 her about the diagnosis, what he told her, and you've
6 opened the door. I can ask her what else she was
7 told.

8 HEARING OFFICER TICHENOR: Correct.
9 BY MR. McGOVERN:

10 Q. What did he tell you in terms of what
11 effect, if any, the quarry and dust would have on
12 your condition?

13 A. "Exposure to both dust and diesel or
14 other exhaust fumes are known triggers for this
15 patient. A rock quarry in close proximity will
16 certainly cause exacerbation and long-term worsening
17 of her disease."

18 Q. Has your condition improved since the
19 APAC quarry closed?

20 A. Yes, as a matter of fact.

21 Q. The other direction out of the quarry,
22 you indicated you could come out and turn to the
23 right, go down that sharp curve or you could travel
24 all the way to D Highway?

25 A. Yes, sir.

1 Q. If you traveled to D Highway, would you
2 cross or drive in front of the Christian school?

3 A. Yes.

4 Q. That's a grammar school?

5 A. Yes, sir.

6 Q. Would you also go past that senior
7 center?

8 A. Yes, sir.

9 Q. At the corner of Woodriver and D?

10 A. Yes, sir.

11 MR. McGOVERN: Nothing further.

12 HEARING OFFICER TICHENOR: Mr. Brownlee,
13 do you now wish --

14 MR. BROWNLEE: No.

15 HEARING OFFICER TICHENOR: No recross?
16 You're now dismissed.

17 THE WITNESS: Thank you.

18 HEARING OFFICER TICHENOR: Thank you.

19 MR. McGOVERN: Steven Beeny.

20 HEARING OFFICER TICHENOR: Mr. Beeny,
21 come forward to be sworn.

22 (The witness was sworn.)

23 HEARING OFFICER TICHENOR: Please have a
24 seat in the witness chair. Proceed.

25 MR. McGOVERN: Thank you.

1 DIRECT EXAMINATION BY MR. McGOVERN:

2 Q. Mr. Beeny, would you state your name for
3 the record.

4 A. Steven Beeny.

5 Q. And what is your address, Mr. Beeny?

6 A. 59 Woodriver Road.

7 Q. Could you point out to Mr. Tichenor on
8 the map approximately where your home is located?

9 A. Certainly. We live right there
10 (indicated).

11 HEARING OFFICER TICHENOR: B-e-e-n-e-y?

12 THE WITNESS: N-y.

13 HEARING OFFICER TICHENOR: I'm sorry.

14 BY MR. McGOVERN:

15 Q. I'm sorry, Mr. Beeny. If you could do
16 that again.

17 A. No problem.

18 Q. We were spelling up here. You are
19 pointing to?

20 MR. BROWNLEE: Can he mark a little
21 letter there?

22 MR. McGOVERN: Sure.

23 MR. BROWNLEE: Would that be okay? Put
24 a B there.

25 BY MR. McGOVERN:

1 Q. You're marking the letter B at a
2 location just at the intersection or close to the
3 intersection of Highway D and Woodriver Road?

4 A. We're six-tenths of a mile south of
5 Highway D.

6 Q. Is your address -- I'm sorry. Is it
7 actually on Woodriver or on Highway D?

8 A. No. We're on High -- on Woodriver
9 Road --

10 Q. How long have you lived --

11 A. 59 Woodriver.

12 Q. How long have you lived there?

13 A. I've lived there eight years.

14 Q. Are you married, sir?

15 A. Yes, I am.

16 Q. And do you have any children?

17 A. Yes. We have three children, two in
18 college and one in grade school.

19 Q. And again, to get to the point, in terms
20 of your concerns relative to the quarry, do they
21 relate to a health condition that your seven-year-old
22 son has?

23 A. Yes. His -- it appears that dust has a
24 very negative impact on his breathing, mine also. I
25 discovered that after I moved into the neighborhood.

1 On the more dusty days, both of us have real problems
2 breathing.

3 Q. The condition or these symptoms that you
4 experience, are you receiving any treatment for that?

5 A. No, we do not.

6 Q. And your son, does he receive any
7 treatment?

8 A. No, he does not.

9 Q. Will you describe for Mr. Tichenor the
10 symptoms that he experiences, at least that you've
11 observed, related to dust and any reaction that he
12 might have?

13 A. It's primarily on the days where there's
14 more traffic on the road, when there's dust hanging
15 in the air. He will get so clogged up that he has to
16 breathe through his mouth and his eyes water and he
17 has real respiratory distress.

18 Q. Has he received any treatment for that?

19 A. No. It comes and goes directly
20 dependent on the dust in the air.

21 Q. And what concerns, if any, do you have
22 with respect to the Magruder project?

23 A. Well, my understanding is that the truck
24 traffic will increase significantly, and naturally,
25 the more wheels you have on the road running up and

1 down, the more dust there will be in the air. And
2 the more dust there is, the more he's going to be
3 stressed. Myself too.

4 Q. Now, did your son or does your son
5 attend the Christian school?

6 A. He does in the summertime.

7 Q. And do you have any concerns -- well,
8 let's back up a second. Would you point out to
9 Mr. Tichenor where the Christian school is located on
10 Woodriver Road?

11 A. Certainly.

12 Q. If you would just put a letter C next to
13 the area in which the school is located.

14 A. (Witness complied.) I believe this is
15 the Christian school right here.

16 Q. We've also talked briefly about the
17 senior center. And where is that located on
18 Woodriver Road?

19 A. It's not shown here. It would be
20 approximately right there (indicated).

21 Q. Is it down at the corner of Woodriver
22 and Highway D?

23 A. Yes, it is.

24 Q. Would you describe to Mr. Tichenor what
25 type of school is the Christian school?

1 A. It's kindergarten through 12th grade.
2 It's a private school, has approximately 35, 40
3 children that attend it. They occasionally will take
4 preschoolers. But it's a very good curriculum. It's
5 a husband, wife and daughter that -- that operate it.

6 Q. And have you observed children who
7 either walk or ride their bikes to and from that
8 school?

9 A. Yes.

10 Q. And do they do so along Woodriver Road?

11 A. Yes, they do.

12 Q. Did your son or does your son actually
13 walk or ride his bike to that school in the
14 summertime?

15 A. I walk with him sometimes, yes. You
16 know, being as young as he is, I'm a little reluctant
17 to turn him loose yet.

18 Q. I have a 15-year-old daughter and I feel
19 the same way.

20 MR. McGOVERN: Don't put that on the
21 record.

22 THE COURT REPORTER: Sorry.

23 MR. BROWNLEE: She probably worries
24 about you too.

25 HEARING OFFICER TICHENOR: It is getting

1 late, but let's move on.

2 BY MR. McGOVERN:

3 Q. Mr. Beeny, could you explain to
4 Mr. Tichenor what your concerns are relative to
5 either the health of your son and family as well as
6 the safety of your son and potentially other children
7 who attend that school?

8 A. The primary concern that -- that we have
9 is the increased truck traffic. It's -- when I moved
10 there eight years ago, it was a fairly calm setting
11 in the country, and that's why we chose to live
12 there. We wanted a place that was good for our two
13 children at that point, and was a -- more of a
14 community.

15 We are very concerned that the truck
16 traffic -- we have children riding bicycles on the
17 road, walking across the streets to see the other
18 children, to go play, and -- and the children of that
19 age just don't think. You know, they don't have life
20 experience to know. Even though we tell them to look
21 both ways, they don't stop to do it sometimes. And
22 all it takes is that one time for tragedy to strike.

23 The neighbor next door to us is in a
24 walker, she's a senior citizen. She has to cross the
25 road every day to get her mail, and she'll go out and

1 sometimes just go over to the plants on the other
2 side of the road to pick them.

3 But mostly it's the children. My son
4 has friends who live next door, live across the
5 street two houses up. Also, halfway up the hill to
6 the Christian church he has friends and he goes to
7 visit them and they come down to visit him. And if
8 they're riding bicycles or walking, they just -- it
9 looks like a very dangerous situation.

10 MR. McGOVERN: I don't have anything
11 further.

12 HEARING OFFICER TICHENOR: Mr. Brownlee?

13 CROSS-EXAMINATION BY MR. BROWNLEE:

14 Q. Mr. Beeny, my name is Richard Brownlee.
15 I'm an attorney representing the Magruder Limestone
16 Company, the applicants for the permits. Good
17 evening.

18 You said you've lived there eight years?

19 A. That's correct.

20 Q. Where did you live before?

21 A. I lived off of Lake Road 5449 known as
22 Malibu Road.

23 Q. And that was a paved road; is that not
24 correct?

25 A. That's correct.

1 Q. And where your home is located on
2 Woodriver Road, that's gravel; is that not correct?

3 A. Yes, it is.

4 Q. And you've lived there eight years; is
5 that correct?

6 A. Yes, sir.

7 Q. And how old is your son?

8 A. My youngest son --

9 Q. Yeah.

10 A. -- is seven years old.

11 Q. Okay. So he's been there the entire
12 time, correct?

13 A. Yes, he has.

14 Q. Okay. And would it be of help if
15 Woodriver Road were paved?

16 A. There's been a lot of discussion about
17 that, and I feel very strongly both ways. I think
18 that it would certainly cut down on the dust, but it
19 would also make the availability of increased speed a
20 reality on Woodriver, and we certainly don't need
21 anybody driving faster than they do currently.

22 Q. The potholes there are great speed
23 bumps, correct?

24 A. They are.

25 Q. Has anyone told you in this process or

1 your preparation as to the routing -- truck routing
2 plans that Magruder intends to utilize if this
3 facility is granted?

4 A. No, sir. I've had no conversation about
5 truck routing.

6 Q. Do you have any idea where the proposed
7 egress and ingress site from the Magruder facility is
8 located on Woodriver Road, if it's located on
9 Woodriver Road?

10 A. I do not know whether it is located on
11 Woodriver Road or not.

12 Q. So assuming -- were you here and heard
13 the previous witness testify that the trucks are
14 gonna come down in front of her property and then go
15 over to Highway 54?

16 A. I would assume that some of them will go
17 down that way, at least half of them, depending on
18 which way they are going to deliver their -- their
19 loads. If they're going to the west, it would be
20 advantageous in many instances to come past our house
21 or I wouldn't be here tonight.

22 Q. Well, from a safety standpoint, it would
23 seem more sensible to go through an area that's
24 very -- has limited residential occupation that could
25 get you out to 50 [sic] as opposed to driving all the

1 way up through all of those homes and then getting on
2 Route D, would it not?

3 A. In most cases, that would seem more
4 expeditious, but they get paid by the load, and
5 time's money.

6 Q. Well, have you -- have you done any time
7 study as to whether from -- and you don't really know
8 where the ingress/egress point is planned --

9 A. No, I do not.

10 Q. -- right? You wouldn't know which is
11 actually quicker to get out to Highway 54 --

12 A. No. I know -- I know the general area,
13 and I would say that it depends on where their loads
14 are going. If Magruder were going to be delivering
15 gravel to Mr. Atkisson's development, it would
16 certainly be closer to take it through our
17 neighborhood.

18 Q. Well, do they -- were you living there
19 when they did the construction on the -- what is the
20 Lowe's and the Hy-Vee?

21 A. Yes.

22 Q. Did they do blasting there, do you know?

23 A. I don't know.

24 Q. Was that rock -- were you there when
25 they brought the rock in and did the ...

1 A. I've been there eight years.

2 Q. Did you have any issue with dust during
3 the construction of those two projects?

4 A. Only from traffic.

5 Q. And that was traffic, again, on
6 Woodriver Road?

7 A. That was correct.

8 Q. So you're more concerned with traffic
9 right in front of your property as opposed to --

10 A. Well --

11 Q. -- I mean, dust from that road as
12 opposed to surrounding construction?

13 A. That would be my primary concern, that's
14 correct.

15 MR. BROWNLEE: Okay. I have nothing
16 else. Thank you, sir.

17 HEARING OFFICER TICHENOR: Mr. Duggan?

18 MR. DUGGAN: No questions.

19 HEARING OFFICER TICHENOR: Thank you.
20 Mr. Mauer?

21 MR. MAUER: No questions.

22 MR. McGOVERN: Nothing further.

23 HEARING OFFICER TICHENOR: No -- no
24 redirect?

25 MR. McGOVERN: No redirect.

1 HEARING OFFICER TICHENOR: Thank you,
2 Mr. Beeny. I have no questions. You're dismissed.

3 THE WITNESS: Thank you.

4 HEARING OFFICER TICHENOR: Last witness
5 for tonight will be Joseph Bax. Mr. Bax, will you
6 come forward and be sworn in, please. Stand right
7 here and raise your right hand.

8 (The witness was sworn.)

9 HEARING OFFICER TICHENOR: Please take a
10 seat in the witness chair.

11 DIRECT EXAMINATION BY MR. McGOVERN:

12 Q. Before you take a seat, why don't you
13 stay standing and --

14 A. Yeah.

15 Q. -- and we'll have you go right to the
16 board. Mr. Bax, would you state your full name for
17 the record first.

18 A. Yes. Joseph M. Bax.

19 Q. And Mr. Bax, could you indicate on the
20 board where your home is located?

21 A. Down that 67 Woodriver Road.

22 Q. Why don't you take a pen if Mr. Brownlee
23 will let you borrow his.

24 MR. BROWNLEE: I've got a -- I now have
25 a green marker that may be operational. Why don't

1 you try that.

2 BY MR. McGOVERN:

3 Q. And why don't you put a B next to
4 approximately where your home's located.

5 A. (Witness complied.) Right here. It's
6 on this property.

7 MR. BROWNLEE: Did that show up? I
8 can't see that far.

9 THE WITNESS: Let me see. Hold on a
10 second. This may not -- I grabbed the wrong one
11 myself. Here, it's right here. The lagoon's in this
12 direction here somewhere. Yeah, right here.

13 BY MR. McGOVERN:

14 Q. You're pointing to a lot which would be
15 just to the north of Highway D on Woodriver Road?

16 A. That would be correct.

17 Q. Appears to be approximately four parcels
18 to the north; is that correct?

19 A. Yes.

20 Q. You can sit down. Mr. Bax, how long
21 have you resided in that location?

22 A. We've been there almost 21 years.

23 Q. And what is the water systems that you
24 have or your availability for clean drinking water at
25 your home and those around you?

1 A. They're all primarily wells.

2 Q. In terms of the sewer system, are you
3 serviced by the water treatment plant?

4 A. No.

5 Q. What type of system do you have?

6 A. I have a lagoon.

7 Q. In terms of the well system, will you
8 describe for us very briefly how does that -- how
9 does that work?

10 A. My well is approximately 350 feet deep.
11 My concerns along those lines is if a sewer line were
12 to break, that that water would -- or that sewage
13 would leach into those water tables and -- and
14 pollute, you know, the wells.

15 Q. And how long have those wells been in
16 place?

17 A. Since 19 -- 1980.

18 Q. Have you ever had any prior instance of
19 any sewage leaching into your water system?

20 A. No.

21 Q. When you're talking about your concerns,
22 are you talking about your concerns with respect to
23 the proposed Magruder quarry?

24 A. Yes.

25 Q. And when you're referring to sewer lines

1 breaking and sewage leaching into the groundwater,
2 are you talking about that sewer line that is
3 depicted through the center of the Magruder proposed
4 quarry?

5 A. That is correct.

6 Q. And do you have any other concerns with
7 respect to the proposed quarry other than the fact of
8 potential impact on your water?

9 A. Just the things mentioned before, the --
10 the safety of all the trucks going through there. It
11 is a neighborhood, residential neighborhood and
12 there's a lot of houses through there. There's a lot
13 of parcels to be subdivided -- that are -- have been
14 subdivided, probably 120-plus, and much potential for
15 more people to come in. So concerned about the --
16 the traffic with children playing and all of that.

17 Q. And you're talking about traffic that
18 would proceed south down Woodriver Road to Highway D
19 to get to Highway 54?

20 A. That's correct.

21 Q. And that would, in fact, be the traffic
22 that would pass your home; is that correct?

23 A. That's correct.

24 Q. How wide is Woodriver Road at that point
25 as it travels from the proposed location of the

1 quarry down Woodriver Road?

2 A. Just the physical surface, probably 20
3 feet.

4 Q. Do you think that road as it currently
5 exists is wide enough for two dump trucks carrying
6 aggregate material to pass?

7 A. Not safely.

8 Q. Are there curbs along Woodriver Road?

9 A. Curb?

10 Q. Yes.

11 A. As far as curb and gutter or curves?

12 Q. Yes.

13 A. No.

14 Q. Are you aware as to whether or not there
15 is a proposal or at least a plan to construct a road,
16 a different road to allow ingress and egress onto
17 Highway 54?

18 A. Nothing more than speculation.

19 Q. If, in fact, there is now a third way in
20 which you can access Highway 54, are you aware of any
21 conditions which have been explained to you that
22 would prohibit third-party truckers from taking
23 either the new road or traveling to the north or
24 traveling to the south to get to Highway 54?

25 A. No, sir.

1 MR. McGOVERN: I don't have anything
2 else.

3 HEARING OFFICER TICHENOR: Mr. Brownlee,
4 cross-examination?

5 CROSS-EXAMINATION BY MR. BROWNLEE:

6 Q. Mr. Bax, my name is Richard Brownlee.
7 I'm representing Magruder Limestone Company, the
8 applicant today. Good evening. You've lived there
9 21 years?

10 A. Yes, sir.

11 Q. And Woodriver Road is a gravel road,
12 correct?

13 A. That is correct.

14 Q. And it's always been a gravel road?

15 A. Yes.

16 Q. Who maintains that road?

17 A. The Special Road District. It's part of
18 Miller County.

19 Q. There's supposed to maintain it, right?

20 A. They're -- yes. Obviously, you've been
21 down it?

22 Q. Yeah. And I know it's very difficult
23 from this map because it's not a topography map, it
24 doesn't show the elevations, but Woodriver Road where
25 you live is -- is fairly high on top of the bluff, is

1 it not?

2 A. That is correct.

3 Q. Is that a fact?

4 A. Uh-huh.

5 Q. Is that correct?

6 A. That's correct.

7 Q. And if you looked east from your
8 property down towards the red sewer line, there's a
9 big valley that's all through there, is it not?

10 A. That's correct.

11 Q. So if the -- if the sewer line would
12 break, let's just say hypothetically, in the Magruder
13 property, that -- the aquifer, all of the sewage
14 would actually be going is it to -- at a level much
15 lower than your property; is that correct?

16 A. That's not necessarily true.

17 Q. Do you --

18 A. My well is at 350 feet, and so that
19 vertical difference there, it would definitely -- if
20 it hit a water table that was in -- in one of my
21 veins, it would come.

22 Q. Do you know where your veins run --

23 A. No.

24 Q. -- in terms of that -- of that potential
25 location of the sewer line?

1 A. No, sir.

2 Q. Go ahead.

3 A. I just know that, you know, with knowing
4 how deep my well is, there's that potential for that
5 leaching.

6 Q. And is that -- do you know what the --
7 the stone surrounding your well is? Is it karst
8 topography or what?

9 A. I'm not for sure.

10 Q. Limestone of some sort, stone?

11 A. Yeah.

12 Q. And you drilled that well yourself?

13 A. It was a previously drilled well.

14 Q. 300 --

15 A. I'm the second owner.

16 Q. 350 feet?

17 A. Yes.

18 Q. Do you know how much of it was through
19 stone?

20 A. No. I'd have to ask Mr. Atkisson.

21 Q. Okay. And do you know where the
22 proposed blast plan would -- for the Magruder
23 property, where it would be located on this map?

24 A. No, sir.

25 Q. Do you have any idea where these trucks

1 planned on an egress or -- ingress or egress from the
2 Magruder site?

3 A. As Mr. -- I agree with Mr. Beeny, that
4 depending on where the rock was needed most, I think
5 that would be the site where the trucks would go.

6 Q. That's your opinion?

7 A. I've observed that from being around
8 construction sites and knowing that they would take
9 the shortest route. It's a cost thing.

10 Q. But you know -- are you -- you're not
11 here testifying what Magruder's plan is, you're
12 just --

13 A. No.

14 Q. -- what your idea is?

15 A. Yes.

16 MR. BROWNLEE: I don't think I've got
17 anything else. Thank you.

18 THE WITNESS: You're welcome.

19 HEARING OFFICER TICHENOR: Mr. Duggan?

20 MR. DUGGAN: No questions.

21 HEARING OFFICER TICHENOR: Mr. Mauer?

22 MR. MAUER: No questions.

23 MR. McGOVERN: Just one.

24 HEARING OFFICER TICHENOR: Proceed,
25 Mr. McGovern.

1 REDIRECT EXAMINATION BY MR. McGOVERN:

2 Q. I should have asked you this, Mr. Bax.
3 What do you do?

4 A. I'm a professional land surveyor.

5 Q. And do you do that on behalf of MoDOT or
6 a private company?

7 A. MoDOT.

8 Q. How long have you been doing that?

9 A. With MoDOT? With MoDOT since -- or
10 about eight years with them.

11 Q. And before that were you also a
12 professional land surveyor?

13 A. Yes.

14 Q. So when you indicated that you have some
15 familiarity around construction sites, is that what
16 you're referring to?

17 A. Yes.

18 Q. You were asked a question as to if you
19 knew what Magruder's plan was on truck traffic. I
20 understand you do not, correct?

21 A. That's correct.

22 Q. Do you understand that trucks other than
23 those that may be owned or operated by Magruder will
24 be taking material from that site?

25 A. Yes.

1 Q. Are you aware of any restrictions with
2 respect to the construction project that would, in
3 fact, limit those trucks' ability to travel in any
4 direction they choose once they leave that quarry?

5 A. I'm not aware of anything.

6 MR. McGOVERN: I don't have anything
7 else.

8 HEARING OFFICER TICHENOR: Recross?

9 RE CROSS-EXAMINATION BY MR. BROWNLEE:

10 Q. So are you an employee of MoDOT?

11 A. Yes, sir.

12 Q. And have you done the survey work on the
13 Highway 54 relocation?

14 A. Some of our crews have, yes.

15 Q. Okay. Do you know where the rock that's
16 coming out of this Magruder facility is intended to
17 be placed?

18 MR. McGOVERN: Objection, speculation.

19 MR. BROWNLEE: Well, we can ask.

20 HEARING OFFICER TICHENOR: Well, if he
21 knows. If he knows.

22 MR. MAUER: I'd also object it's
23 irrelevant.

24 THE WITNESS: For that -- for that
25 54 project right there --

1 HEARING OFFICER TICHENOR: Overruled.

2 Proceed.

3 BY MR. BROWNLEE:

4 Q. Yeah.

5 A. -- there's sufficient rock in place
6 there. We don't need any rock from that quarry to do
7 what we need to do there.

8 Q. And that's your opinion?

9 A. No. That's the opinion of the
10 designers.

11 Q. Oh, it is?

12 A. For MoDOT, yeah. Yes, it is.

13 Q. So you don't know whether the --
14 Magruder Stone is subcontracted to go into this
15 Highway 54 project?

16 A. On this first part, not.

17 Q. What about the second part?

18 A. I'm not aware of any on the second part.

19 MR. BROWNLEE: Okay. Thank you.

20 HEARING OFFICER TICHENOR: Any recross
21 or redirect on that?

22 MR. McGOVERN: No.

23 HEARING OFFICER TICHENOR: Thank you,
24 sir.

25 THE WITNESS: Thank you.

1 HEARING OFFICER TICHENOR: You're
2 dismissed. Is that your last witness?

3 MR. McGOVERN: That would be the last
4 witness tonight. We would keep the record open for
5 discussions with counsel as to -- there are a few
6 other witnesses -- we've maybe narrowed it down --
7 who were not available this week, but we'll just
8 recall them if need be.

9 HEARING OFFICER TICHENOR: With that,
10 then, we will -- we -- it will not be necessary for
11 us to reconvene tomorrow night for the continuation
12 of the evidentiary hearing. And with that, the
13 hearing is adjourned.

14 (HEARING ADJOURNED.)
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1 CERTIFICATE OF REPORTER

2 STATE OF MISSOURI)
3) ss.
4 COUNTY OF COLE)
5

6 I, PAMELA FICK, RMR, RPR, CSR, CCR #447,
7 within and for the State of Missouri, do hereby
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